TEXAS REGISTER

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Cristina Garcia

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0591

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Texas Lottery Commission may adopt a rule authorizing video or digital display of the outcome of instant bingo games (RQ-0597-GA)

S U M M A R Y

A Texas Lottery Commission rule authorizing the "graphic and dynamic" video confirmation device solely to inform players of the winning numbers in a bingo game would not by itself convert the game into electronic bingo.

Opinion No. GA-0592

Mr. James A. Cox, Jr.

Chair, Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the Texas Lottery Commission may operate a raffle-style game (RQ-0602-GA)

S U M M A R Y

The Texas Lottery Commission may not operate a "raffle-style" game, nor may it enter into a contract with a private entity to operate such a game on behalf of the state.

Opinion No. GA-0593

The Honorable Jesusa Sanchez-Vera

Jim Wells County Attorney

Post Office Drawer 2080

Alice, Texas 78333

Re: Court's authority to modify the conditions of probation to allow probationers to pay a fee in lieu of community service hours not performed (RQ-0604-GA)

S U M M A R Y

A court does not have general authority to modify the conditions of probation to require the probationer to pay a fee to be used for community supervision and correction department purposes in lieu of performing community services.

Under appropriate circumstances, a court may modify conditions of probation to eliminate a condition requiring the performance of community services. A court may modify conditions of probation to require a probationer to make a specified donation to a local food bank or food pantry in lieu of community service. And a court may modify the conditions of probation to require a payment only if the payment is expressly authorized by law or constitutes a fine, court costs, restitution to the victim, or a condition related personally to the rehabilitation of the defendant.

Opinion No. GA-0594

The Honorable R. Kelton Conner

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Whether Hood County is responsible for maintaining certain subdivision roads (RQ-0606-GA)

S U M M A R Y

A commissioners court's approval of the subdivision plat for filing does not constitute county acceptance of a dedication of roads depicted on the plat. Under Transportation Code chapter 281 counties with a population of 50,000 or less may acquire a public interest in a private road only according to the specific methods set out in that chapter. A road may be dedicated to a county subject to chapter 281 only by an explicit, written communication to the commissioners court. Adverse possession cannot be shown by maintenance of the road with public funds.

Opinion No. GA-0595

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Applicability of the nepotism statutes, Government Code chapter 573, to an individual employed by the City of Pharr (RQ-0608-GA)

S U M M A R Y

The charter of the City of Pharr, a home-rule municipality, delegates to the city manager the power to appoint individuals to positions below the department-head level without consulting the municipal governing board. If the charter provides the city manager with full and final appointing authority to appoint individuals to such positions and reserves no authority for the city's governing body in these appointments, the city manager may appoint an individual who is related to a city commissioner, but who is not related to the city manager, without contravening the nepotism statutes, Government Code chapter 573.

Opinion No. GA-0596

The Honorable Homero Ramirez

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78042

Re: Operation of Texas Education Code section 11.168 prohibiting certain school district agreements (RQ-0609-GA)

S U M M A R Y

The general rule in Texas is that statutes apply prospectively unless the statutory language indicates that the Legislature intended the statute to apply retroactively. Texas Education Code section 11.168 prohibits a school district board of trustees from entering into an agreement authorizing the use of school district resources for improvement of real property not owned or leased by the school district. Because the statute does not indicate that the Legislature intended the statute to apply retroactively, it does not apply to such an agreement entered into before the effective date of the statute.

Opinion No. GA-0597

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a member of the Village of Wimberley City Council may serve simultaneously on the board of directors of the Wimberley Water Supply Corporation (RQ-0613-GA)

S U M M A R Y

Under Local Government Code section 171.009, the mayor of the Village of Wimberley and a member of the Village of Wimberley City Council may serve simultaneously on the Wimberley Water Supply Corporation's board of directors only if they receive no compensation or other remuneration from the water supply corporation.

Opinion No. GA-0598

Mr. Thomas A. Davis, Jr., Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

Re: Whether section 521.032, Transportation Code, which permits the Department of Public Safety to issue an enhanced driver's license or personal identification certificate for the purpose of crossing the border between Texas and Mexico conflicts with federal law (RQ-0610-GA)

S U M M A R Y

Section 521.032 of the Texas Transportation Code requires an enhanced driver's license to be supported by an applicant's proof of citizenship, identity, and state residency, and to include a one-to-many biometric matching system as well as reasonable security and encryption measures. A section 521.032 enhanced driver's license is consistent with current federal law regarding passports if: (1) the license is "determined . . . by the Secretary of Homeland Security to be sufficient to denote identity and citizenship"; and (2) the license conforms to the technology, security, and operational requirements of the Western Hemisphere Travel Initiative implemented under section 7209(b) of Public Law 108-458, such as being machine readable and tamper proof.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800295
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 23, 2008

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100, 21.2102, 21.2103

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis amendments to §§21.2100(5), 21.2102(1), and 21.2103(1)(A), concerning eligibility for benefits for veterans and their dependents under the Hazlewood Act, §54.203 of the Texas Government Code.

The amendments are being adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if an imminent peril to the public welfare requires adoption of the rule on less than 30 days notice. The proposed amendments redefine the term "citizen of Texas" as "resident of Texas," and strike from the eligibility requirements for Hazlewood benefits the requirement that, in order for a veteran or his or her dependents to be eligible for Hazlewood benefits, such veteran must have been a citizen of the United States at the time he or she entered the armed services.

The Coordinating Board hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The amendments are being adopted on an emergency basis under the Texas Government Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if an imminent peril to the public welfare requires adoption of the rule on less than 30 days notice.

§21.2100. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Citizen of Texas--A person who is a [~~United State Citizen and a~~] resident of Texas.

(6) - (19) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) at the time he or she entered the service, was [~~a citizen of the United States and~~] a resident of Texas;

(2) - (8) (No change.)

§21.2103. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) are dependent children of:

(A) members of the U.S. Armed Forces who were [~~citizens of the United States and~~] residents of Texas when they entered the service and who

(i) - (iv) (No change.)

(B) (No change.)

(2) - (3) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 15, 2008.

TRD-200800174
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: January 15, 2008
Expiration Date: May 13, 2008
For further information, please call: (512) 427-6114

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §109.243

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (the Department), adopts, on an emergency basis, amendments to §109.243, concerning Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate.

The Commission finds that imminent peril to public health, safety, and welfare requires adoption of this rule on fewer than 30 days' notice.

The reason for this finding is that the Department has received and anticipates receiving complaints against interpreters for the deaf, who are certified by the Department, alleging inappropriate and/or criminal sexual conduct between interpreters and other individuals, some of are children. The Department does not have adequate rules in place to address revocation, suspension, or other disciplinary actions against interpreters for such alleged conduct, only for convictions. The Department's interpreter certification is one of the primary certifications being used by deaf interpreters to obtain employment with, among other employers, school districts.

Recent federal regulations from the U.S. Department of Education (specifically 34 Code of Federal Regulations §300.156, published August 2006) and state rules from the Texas Education Agency (specifically 19 TAC §89.1131(a) and (d), adopted November 2007) mandate that school districts employ only licensed or certified interpreters. Without the emergency adoption of the rule amendments, the Department is severely restricted in disciplinary actions against interpreters alleged to have engaged in inappropriate conduct. These interpreters would be allowed to retain the Department's certification and move from school district to school district or other employment where vulnerable individuals are at risk, without having the validity of the allegations explored by the Department or their certifications challenged in Department disciplinary proceedings. The amended rule will allow the Department to initiate disciplinary proceedings on the basis of these allegations and to take appropriate disciplinary action, where legally supported by facts and credible evidence.

The amendment is adopted, on an emergency basis, pursuant to the Commission's statutory rulemaking authority under Texas Human Resources Code, §81.007(h), and Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§109.243. Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate.

[~~(a)~~] The Office may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal and state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations including, but not limited to, the following: [~~conviction of a felony or any offense involving theft or controlled substances. In determining if the criminal conviction has a direct bearing on whether the interpreter or applicant should be entrusted to serve the public, the Office considers the particular facts and circumstances of each case to include evidence of those matters required by Texas Revised Civil Statutes, Articles 6252-13c and 13d. The crimes having such a direct bearing include criminal conduct of homicide, rape, sexual abuse, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, perjury, and those relating to controlled substances;~~]

(A) any felony, including but not limited to homicide, rape, sexual abuse of a child, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, and perjury;

(B) any misdemeanor involving moral turpitude that involves dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflects adversely on the certificate holder's honesty, trustworthiness, or fitness to interpret under the scope of the person's certificate; or

(C) any offense involving theft or controlled substances;

(2) engaging in sexually inappropriate behavior with or comments directed at a consumer, including individuals who are part of the interpreted situation, or a person under the age of eighteen; [~~use or under the influence of drugs or intoxicating liquors to an extent that affects his or her professional competence. This includes: the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, whether or not controlled, to an extent that is dangerous to the interpreter or applicant, or any other members of the public; the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, to the extent that such use impairs the interpreter's or applicant's ability to perform the work of interpreting in a competent and responsible manner;~~]

(3) using or being under the influence of drugs, whether or not controlled, or intoxicating liquors to an extent that affects the interpreter's professional competence;

(4) [~~(3)~~] impersonating another person who holds an interpreter certification from the office;

(5) [~~(4)~~] allowing another person to use their interpreter certification;

(6) [~~(5)~~] representing oneself or another interpreter as having a level of certification different from the actual level of certification awarded by the office, in excess of the actual level of certification;

(7) [~~(6)~~] using fraud, deception, which includes, but is not limited to cheating, or misrepresentation in an application for certification, during the certification examination or evaluation, or in the certification maintenance or renewal process;

(8) [~~(7)~~] [~~willfully~~] violating or aiding in the violation of the CODE OF PROFESSIONAL CONDUCT described in §109.245 of this title (relating to Code of Professional Conduct);

(9) [~~(8)~~] being grossly incompetent or grossly negligent in performing the duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of their duties;

(10) [~~(9)~~] being adjudicated mentally incompetent by a court of competent jurisdiction;

(11) [~~(10)~~] intentionally harassing, abusing, or intimidating, either physically or verbally, a consumer, including individuals who are part of the interpreted situation; a board member;[~~,~~] evaluator;[~~,~~] or any staff of the Department;

(12) [~~(11)~~] intentionally divulging or using inappropriately any aspect of confidential information relating to the certification evaluation including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials deemed confidential;

(13) [~~(12)~~] failure to meet requirements for certification maintenance;

(14) [~~(13)~~] engaging in the practice of interpreting while certification is suspended;

(15) [~~(14)~~] falsification of re-certification documents by altering original letters, certificates issued through continuing education, or attendance verification; or

(16) [~~(15)~~] violation of a statute, rule, or policy concerning [~~of~~] the Office or Department.

~~[(b) Authority: Human Resources Code, §81.007(h).]~~

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800196
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective Date: January 17, 2008
Expiration Date: May 15, 2008
For further information, please call: (512) 424-4050

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.310

The Health and Human Services Commission (HHSC) proposes new §355.310, concerning the reimbursement methodology for customized power wheelchairs (CPWCs) and associated physical or occupational therapy evaluations for qualified Texas nursing facility residents.

Background and Justification

This rule describes the reimbursement methodology for CPWCs and associated physical or occupational therapy evaluations for qualified Texas nursing facility residents authorized under 40 Texas Administrative Code (TAC) §19.2614. Section 19.2614 relates to Nursing Facility Customized Power Wheelchairs and was proposed in the January 18, 2008, issue of the *Texas Register* (33 TexReg 521).

The Texas Department of Aging and Disability Services is adding CPWCs as an item reimbursable by Medicaid for qualified Texas nursing facility residents as part of the settlement agreement in the lawsuit filed in federal court against HHSC and DADS entitled *LeCompte, et al. v. Hawkins, et al*. This rule details how reimbursements will be calculated for these CPWCs and associated physical or occupational therapy evaluations.

Section-by-Section Summary

The proposal creates a new section in the HHSC rule base at 1 TAC §355.310 to:

Describe in paragraph (1) the reimbursement methodology for CPWCs.

Describe in paragraph (2) the reimbursement methodology for physical or occupational therapy evaluations associated with CPWCs.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the proposed rule is in effect there will be a fiscal impact to state government of $664,477 for state fiscal year (SFY) 2008, $672,910 for SFY 2009, $522,769 for SFY 2010, $535,838 for SFY 2011, and $549,234 for SFY 2012 as a result of adding this service to the nursing facility program. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the proposed rule. The implementation of this proposed rule does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this proposed rule. The proposed rule will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the proposed rule is in effect, the expected public benefit is that nursing facilities will be reimbursed at appropriate rates for CPWCs and associated physical or occupational therapy evaluations.

Takings Impact Assessment

HHSC has determined that this proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The new rule is proposed under Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule affects Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.310. Reimbursement Setting Methodology--Customized Power Wheelchairs and Associated Evaluations.

Reimbursement rates for customized power wheelchairs (CPWCs) and associated physical or occupational therapy evaluations provided under 40 TAC §19.2614 (relating to Nursing Facility Customized Power Wheelchairs) are determined as follows:

(1) For CPWCs, rates are determined in accordance with §355.8021(c) of this title (relating to Reimbursement Methodology for Home Health Services).

(2) For evaluations required for CPWCs under 40 TAC §19.2614(c), rates are determined in accordance with §355.313 of this title (relating to Reimbursement Methodology for Specialized and Rehabilitative Services).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800197
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §226.4

The Prescribed Burning Board (the Board) proposes amendments to Chapter 226, §226.4, concerning insurance requirements for certification. The amendments are proposed to more formally put into place the various policies related to insurance standards that the department, which serves as administrator of the Board's prescribed burn manager certification program, already has used in considering applications for certified prescribed burn managers. Proposed amendments to §226.4 specify that required insurance cannot include specific exclusions related to mere negligence, errors and omissions, smoke damage, pollution or any other damage potentially caused by conducting prescribed burning activities. The proposed amendments also include a provision for the department to develop and provide a form approved by the Board to be completed by an authorized agent of insurer, certifying the coverage complies with requirements of the rule, and requiring an insurer to notify the department of any change or cancellation in insurance policy coverage.

Jimmy Bush, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the proposed amended section is in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the amended section. The existing Prescribed Burning Board rules are not being substantively changed, therefore there will be no additional fees or requirements different from those previously existing.

Mr. Bush has also determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of administering and enforcing the amended section will be a more formalized procedure for applicants and their insurance companies to provide information about insurance coverage. There will be no cost to micro-businesses, small businesses or individuals required to comply with the proposed amendments.

Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §226.4 are proposed under the Texas Agriculture Code, §12.016, which authorizes the department to adopt rules to administer its duties under the Texas Agriculture Code; and §153.041 of the Natural Resources Code, which authorizes the Prescribed Burning Board to be established within the department and to administer the prescribed burn manager certification program.

The codes that will be affected by this proposal is the Texas Agriculture Code, Chapter 12 and the Natural Resources Code, Chapter 153.

§226.4. Insurance Requirements.

(a) The certified prescribed burn manager conducting a prescribed burn shall carry or be covered by:

(1) at least $1 million of liability insurance coverage for each single occurrence of bodily injury to or destruction of property,[~~; and~~]

[~~(2)~~] with a policy period minimum aggregate limit of at least $2 million; and [~~.~~]

(2) the coverage shall include no exclusion for mere negligence, errors or omissions, or smoke damage or other pollution or any other damage related to Prescribed Burning activities.

(b) The Board may accept as proof of acceptable insurance an attestation by an authorized agent of an insurer, made on a Board approved form, certifying that an applicant or certified prescribed burn manager has been issued a policy of insurance that complies with the requirements of subsection (a)(1) and (2) of this section.

(c) The insurer of a certified prescribed burn manager shall notify the Board (TDA Licensing Division) of any cancellation or changes to the policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2008.

TRD-200800193
Dolores Alvarado Hibbs
General Counsel
Prescribed Burning Board
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.312

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 401, Subchapter D, §401.312 (relating to "Texas Two Step" On-Line Game).

The repeal is proposed concurrently with proposed new "Texas Two Step" On-Line Game rule at 16 TAC §401.312. The purposes of the proposed new rule are to provide that no funds will be added to the Texas Two Step prize reserve fund, to allow for the depletion of the Texas Two Step prize reserve fund, to amend the prize structure to account for the fact that no funds will be added to the Texas Two Step prize reserve fund, and to make the language in the rule simpler and easier to read.

Kathy Pyka, Controller, has determined that for each year of the first five years the repeal will be in effect, there are no foreseeable implications related to cost or revenues of the state or local governments expected as a result of enforcing or administering the repeal. Ms. Pyka has also determined that there would be no adverse effect on small businesses, micro businesses, or local or state employment. Ms. Pyka has also determined that there would be no probable economic cost to persons required to comply with the repeal as proposed.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated as a result of the repeal of the existing rule and adoption of the new rule is the elimination of the separate prize reserve fund for the Texas Two Step on-line game, which is neither required by law nor necessary as a matter of practice. The elimination of the prize reserve fund will simplify the prize structure and make the operation of the game easier for players to understand. It may also reduce confusion regarding the prize reserve fund.

The Commission requests comments on the proposed repeal from any interested person. Comments may be submitted to Sarah Woelk, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* The Commission will hold a public comment hearing on this proposal at 10:00 a.m. on February 5, 2008 at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery. The repeal is also proposed under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.312. "Texas Two Step" On-Line Game.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800238
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 344-5012

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16 TAC §401.312

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 401, Subchapter D, §401.312 (relating to "Texas Two Step" On-Line Game).

The purposes of the proposed new rule are to provide that no funds will be added to the Texas Two Step prize reserve fund, to allow for the depletion of the Texas Two Step prize reserve fund, to amend the prize structure to account for the fact that no funds will be added to the Texas Two Step prize reserve fund, and to make the language in the rule simpler and easier to read.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule would be in effect, there are no foreseeable implications related to cost or revenues of the state or local governments expected as a result of enforcing or administering the rule. Ms. Pyka has also determined that there would be no adverse effect on small businesses, micro businesses, or local or state employment. Ms. Pyka has also determined that there would be no probable economic cost to persons required to comply with the rule.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the proposed new rule would be in effect, the expected public benefit is the elimination of the separate prize reserve fund for the Texas Two Step on-line game, which is neither required by law nor necessary as a matter of practice. The elimination of the prize reserve fund will simplify the prize structure and make the operation of the game easier to understand for players. It may also reduce confusion regarding the prize reserve fund.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new

rule may be submitted to Sarah Woelk, Special Counsel, by mail to Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email to *legal.input@lottery.state.tx.us.* The Commission will hold a public hearing on this proposal at 10:00 a.m. on February 5, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery and also under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.312. "Texas Two Step" On-Line Game.

(a) Texas Two Step. The executive director is authorized to conduct a game known as "Texas Two Step." The executive director may issue further directives for the conduct of Texas Two Step that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of four different numbers from one through 35 and the selection of an additional number from one through 35 for one opportunity to win in Texas Two Step, and the purchase of a ticket evidencing that selection.

(2) Playboard--Two fields on a playslip, each with 35 numbers, for use in selecting numbers for a Texas Two Step play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Texas Two Step plays.

(4) Roll cycle--A series of one or more drawings that ends when there is a drawing for which one or more tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing.

(c) Plays and tickets.

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of a play is $1.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers or the Quick Pick option;

(C) by requesting a retailer to use the Quick Pick option to select numbers; or

(D) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make Quick-Pick selections only if the request is made in person.

(8) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(9) A playslip has no monetary value and is not evidence of a play.

(10) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(11) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings.

(1) Texas Two Step drawings shall be held each week on Monday and Thursday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) At each Texas Two Step drawing, the commission shall draw four different numbers from a set of numbers from one through 35, and the commission shall draw a single number from a separate set of numbers from one through 35.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Prizes.

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the jackpot prize (first prize) for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The jackpot prize for a Texas Two Step drawing is the amount the commission establishes and authorizes vendors to publicize for the drawing.

(C) If 23.78 percent of Texas Two Step sales proceeds for a roll cycle are not sufficient to pay a jackpot prize, the commission shall use remaining funds in the Texas Two Step prize reserve fund to

pay the prize. If 23.78 percent of Texas Two Step sales proceeds for a roll cycle and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(2) Second prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the second prize for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The second prize consists of 2.79 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the third prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The third prize consists of 0.34 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fourth prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected at the drawing from a set of 35 numbers; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The fourth prize consists of 4.60 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fourth prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fourth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fourth prize for the next drawing.

(5) Fifth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fifth prize for a drawing if:

(i) two of the four numbers the player selected from a field of 35 numbers match (in any order) two of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The fifth prize consists of 3.04 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fifth prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fifth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fifth prize for the next drawing.

(6) Sixth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a $7 prize for a drawing if:

(i) one of the four numbers the player selected from a field of 35 numbers matches one of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 6.87 percent of sales proceeds for the drawing are not sufficient to pay all of the sixth prizes for that drawing, the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 6.87 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the sixth prizes for a drawing, the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of sixth prizes for a Texas Two Step drawing is less than 6.87 percent of the proceeds from ticket sales of for the drawing, the difference shall be carried forward to fund future sixth prize payments.

(7) Seventh prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a $5 prize for a drawing if:

(i) none of the four numbers the player selected from a field of 35 numbers match any of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 8.58 percent of sales proceeds for the drawing are not sufficient to pay all of the seventh prizes for that drawing, the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 8.58 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the seventh prizes for a drawing, the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of seventh prizes for a Texas Two Step drawing is less than 8.58 percent of the proceeds from ticket sales of for the drawing, the difference shall be carried forward to fund future seventh prize payments.

(8) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(9) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(10) A Texas Two Step prize payment shall be made upon completion of commission validation procedures.

(11) A claimant is not entitled to interest or other earnings on a prize, regardless of when a claim is actually presented and regardless of when payment is made.

(f) Texas Two Step prize reserve fund.

(1) There will be no allocations from Texas Two Step ticket sales to the Texas Two Step prize reserve fund.

(2) When all funds in the Texas Two Step prize reserve fund have been used, the fund shall be abolished.

(g) Jackpot information on Commission website. After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(1) the amount of ticket sales, if any, for previous drawings in the roll cycle; and

(2) the amount of projected ticket sales for the upcoming drawing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200800239
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.100

The Texas Lottery Commission (Commission) proposes amendments to Title 16, Part 9, Chapter 402, Subchapter A, §402.100 (relating to Definitions). The purpose of the proposed amendments is to delete a definition of "card-minding device" that is unnecessary because it is defined in another rule, §402.302. Specifically, the amendments delete paragraph (6) and renumber the remaining paragraphs.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is elimination of language that may cause confusion when reading §402.302 pertaining to card-minding systems.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*. The Commission will hold a public hearing on this proposal at 9:30 a.m. on February 6, 2008 at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The proposed amendments implement Occupations Code, Chapter 2001.

§402.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

~~[(6) Card-minding device--Any mechanical, electronic, electromechanical or computerized device, and including related hardware and software, that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card face five spaces wide by five spaces long, the center space free, and the other spaces containing pre-printed numbers between 1 and 75, inclusive. A card-minding device shall not be a video lottery machine as defined by H.B. 3021, §10, 74th Leg. R.S., 1995.]~~

(6) [~~(7)~~] Commission--The Texas Lottery Commission, the agency created by H.B. 54, 72nd Leg., 1st C.S. (1991), as amended by H.B. 1587 and H.B. 1013, 73rd Leg. R.S., 1993.

(7) [~~(8)~~] Conductor--A licensed authorized organization.

(8) [~~(9)~~] Director--The Director of the Charitable Bingo Operations Division, commonly known as the bingo division, of the Commission.

(9) [~~(10)~~] Executive Director--The Executive Director of the Commission.

(10) [~~(12)~~] Instant bingo card--An instant bingo ticket, pull-tab bingo game, break-open bingo ticket or instant bingo card as defined by §402.300 of this chapter.

(11) [~~(12)~~] Instant bingo ticket--An instant bingo card commonly known as a break-open bingo ticket, a pull-tab bingo game or an instant bingo card as defined by §402.300 of this chapter.

(12) [~~(13)~~] Location--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(13) [~~(14)~~] Operator--A natural person designated pursuant to authority of the Bingo Enabling Act.

(14) [~~(15)~~] Place--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(15) [~~(16)~~] Primary business office--The physical location at which all records relating to the primary purpose(s) of a licensed authorized organization are maintained in the ordinary course of business.

(16) [~~(17)~~] Pull-tab bingo game--An instant bingo card commonly known as a break-open bingo ticket, an instant bingo ticket or an instant bingo card as defined by §402.300 of this chapter.

(17) [~~(18)~~] 24-hour period--A period of 24 consecutive hours commencing at 12:00 midnight.

(18) [~~(19)~~] Working day--Other than a Saturday, Sunday or holiday authorized by law, a period of nine consecutive hours commencing at 8:00 a.m. and ending at 5:00 p.m.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.406

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, Subchapter D, §402.406 (relating to Exemptions from Licensing Requirements). The Commission is proposing the repeal of the rule because the rule is no longer necessary as the Bingo Enabling Act does not require organizations to obtain Commission approval of exempt status.

Kathy Pyka, Controller, has determined that, for each year of the first five years the proposed repeal will be in effect, there will be no significant fiscal impact for state or local government as a result of this proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no adverse effect on individuals as a result of the repeal.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that, for each year of the first five years the proposed repeal of the existing rule will be in effect, the public benefit anticipated is the elimination of an unnecessary rule that is inconsistent with the Bingo Enabling Act.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Assistant General Counsel, by mail at P.O. Box 16630, Austin, Texas 78761; by facsimile at (512) 344-5189; or by e-mail at *legal.input@lottery.state.tx.us*. The Commission will hold a public hearing on this proposal at 9:30 a.m. on February 6, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under the Texas Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The proposed repeal implements the Texas Occupations Code, Chapter 2001.

§402.406. Exemptions from Licensing Requirements.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.705

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, Subchapter G, §402.705 (relating to Compliance Review). The Commission is proposing the repeal of the rule because, during Chapter 402 rule review, the Commission determined that there was no reason to re-adopt the rule. The rule's subject matter is now covered in recently adopted §402.715 (relating to Compliance Audit).

Kathy Pyka, Controller, has determined that, for each year of the first five years the proposed repeal will be in effect, there

will be no significant fiscal impact for state or local government as a result of this proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no adverse effect on individuals as a result of the repeal.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that, for each year of the first five years the proposed repeal of the existing rule will be in effect, the public benefit anticipated is the elimination of an unnecessary and obsolete rule.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Assistant General Counsel, by mail at P.O. Box 16630, Austin, Texas 78761; by facsimile at (512) 344-5189; or by e-mail at *legal.input@lottery.state.tx.us*. The Commission will hold a public hearing on this proposal at 9:30 a.m. on February 6, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in the *Texas Register* in order to be considered.

The repeal is proposed under the Texas Occupations Code, §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The proposed repeal implements the Texas Occupations Code, Chapter 2001.

§402.705. Compliance Review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

The State Board for Educator Certification (SBEC) proposes amendments to §§232.1 - 232.6, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, and 232.890 and the repeal of §232.900, concerning general certification provisions. The proposed amendments and repeal result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031, authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of the state.

To implement statute, the SBEC rules in 19 TAC Chapter 232 are organized as follows: Subchapter A, Types and Classes of Certificates Issued, and Subchapter B, Certificate Renewal and Continuing Professional Education Requirements. These subchapters provide for rules that establish the types and classes of educator certificates issued and requirements for renewal of educator certificates and continuing professional education hours.

The Texas Education Agency (TEA) staff presented draft proposed changes to the SBEC at the July 2007 meeting and at the November 2007 meeting following a September 26, 2007, staff meeting with stakeholders. The SBEC proposes the following changes to 19 TAC Chapter 232 that would clarify the requirements for types and classes of educator certificates issued, including temporary teacher certificates. The following proposed changes would also clarify the requirements for the renewal of certificates and classroom assignments.

Language would be revised in §§232.1(b), 232.800(h), 232.830(b)(2), and 232.830(e) to add that voluntary surrender of a certificate would be in lieu of revocation.

Language would be revised in §232.2(b)(5) and §232.3(c)(2) to remove specification of the types of master teacher certificates in order to avoid additional amendments to the rules if new master teacher certificate areas would be added.

Language would be revised in §232.3(f) to provide that certification examinations can be recommended to the SBEC.

Proposed amendments to §232.3(h) and §232.4(f) would add a definition for TEA staff.

Language would be revised in §232.4(a)(4) and (5) to provide for incorporation of requirements imposed by subsequent amendments to the No Child Left Behind Act (NCLB) into the rule. Also, a definition for Early Childhood would be added to §232.4(a).

Language would be revised in §232.4(c)(1) to clarify that a recognized regional accrediting organization would be as specified in 19 TAC Chapter 230, Subchapter Y. Language would also be added to include an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB). Also, the phrase, "or otherwise approved by a state department of education," would be deleted to ensure educators meet rigorous standards outlined by the accrediting agencies recognized by the THECB.

Language would be revised in §232.4(c)(3) and (d)(1) to remove reference to an alternative certification program.

Language would be revised in §232.4(c)(7) to further define public elementary school level as Early Childhood-Grade 6 and public middle or high school level as Grades 7-12. Language would be added in subsection (c)(7)(B) specifying that an educator would need to pass the appropriate content area certification examination to teach in Grades 7-12. Language would also be revised to specify that the upper division coursework would need to be in the subject taught.

Section 232.4 would be changed by adding new subsection (c)(8) to clarify the requirements for a probationary certificate in a special education assignment.

Language would be revised in §232.4(d) to clarify that a probationary certificate would be for a 12-month period from the date of issuance. Language would also be amended in subsection (d)(2) to change from three school years to three 12-month periods the maximum term that an individual may be employed under a probationary certificate and to list the certificate(s) an individual would be required to hold during the time period.

Discussion at the September 26, 2007, stakeholder meeting, included debate on the need to continue to offer the temporary teacher certificate in §232.5 since school districts have been relying on educator preparation programs to provide educators who qualify for a probationary certificate. After further discussion, language would be amended in §232.5(j) that would clarify that the district has the option of recommending an individual for the standard certificate upon completion of all requirements.

Language would be amended in §232.810 to remove subsections (b) and (c) as they are no longer applicable.

Section 232.820 would be changed by adding new subsection (c) to specify that the expiration date for a certificate issued to the holder of an educational aide certificate who obtains a standard classroom teaching certificate would be based on the issuance date of the classroom teaching certificate.

Language would be revised in §232.830(a)(1) to add that the mailing address used to notify educators would be specified in rule.

Language would be revised in §232.860(2) to specify that an accredited institution of higher education must be recognized by the THECB.

Language would be revised in §232.860(7) that would clarify that the mentoring would be mentoring of another educator.

Language would be revised in §232.870 to remove subsection (a)(8) to clarify that pre-approved providers would not include private companies, private entities, and individuals.

In addition, §232.900 would be repealed since it is obsolete.

Changes to Comply with Senate Bill (SB) 9, 80th Texas Legislature, 2007

As a result of passage of SB 9, changes are recommended to §§232.4(c)(6), 232.5(a)(4), 232.6(b)(7), and 232.830(b)(8). Language would be added to require that an individual submit fingerprints in accordance with the TEC, §22.0831.

Technical Changes

Throughout Chapter 232, numerous grammatical and technical changes would be made, such as replacing the term "Executive Director" with the term "TEA staff" and replacing the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements.

Dr. Raymond Glynn, acting deputy commissioner for school district leadership and educator quality, has determined that for each year of the first five years the proposed amendments and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments and repeal.

Dr. Glynn has determined that for each year of the first five years the proposed amendments and repeal are in effect the public benefit anticipated as a result of the proposed revisions would be ensuring that certified educators have the appropriate training and certificate to address the educational needs of students. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeal.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments and repeal submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§232.1 - 232.6

The amendments are proposed under the TEC, §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The proposed amendments implement the TEC, §§21.003(a); 21.031; and 21.041(b)(1)-(5) and (9).

§232.1. Types of Certificates.

(a) "Type of certificate" means a designation of the period of validity for a certificate and includes the following certificate designations:

(1) standard, as specified in subsection (c) of this section [§232.1(c)];

(2) provisional, as specified in subsection (b) of this section [§232.1(b)];

(3) professional, as specified in subsection (b) of this section [§232.1(b)];

(4) one year [one-year], as specified in Chapter 230, Subchapter O, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries) [§230 Subchapter O and §245];

(5) probationary, as specified in §232.4 of this title (relating to Probationary Certificates) [§232 Subchapter A and §232.4];

(6) temporary, as specified in §232.5 of this title (relating to Temporary Teacher Certificates) and §230.305 of this title (relating to Temporary Certificate); and

(7) emergency, as specified in §230.512 of this title (relating to Emergency Certificates) [§230 Subchapter Q].

(b) All provisional and professional lifetime educator certificates issued prior to September 1, 1999, shall be valid for the life of the individual unless suspended, surrendered in lieu of revocation, or revoked by lawful authority.

(c) Effective September 1, 1999, the standard certificate shall be issued for all classes of certificates as specified in §232.2 of this title [subchapter] (relating to Classes of Certificates)[,] and shall be valid for no more than five years, subject to the requirements of Subchapter B [R] of this chapter [title] (relating to Certificate Renewal and Continuing Professional Education Requirements).

§232.2. Classes of Certificates.

(a) "Class of certificates" means a certificate with the following characteristics:

(1) specific job duties or functions are associated with the certificate;

(2) standards are established by the State Board for Educator Certification (SBEC) [board] for the issuance of the certificate; and

(3) [a] comprehensive examination(s) as [examination is] prescribed by the SBEC [board] for the certificate.

(b) Classes of certificates include the following:

(1) superintendent;

(2) principal;

(3) classroom teacher;

(4) instructional educator other than classroom teacher, including reading specialist;

(5) master teacher[, including master reading teacher];

(6) school librarian;

(7) school counselor;

(8) educational diagnostician; and

(9) educational aide.

§232.3. Development, Approval, Implementation, and Evaluation of Teacher Certification Standards.

(a) Purpose. The purpose of the certification standards shall be to ensure the highest level of teacher preparation and practice to achieve student excellence.

(b) Objectives. The objectives of the certification standards are:

(1) to establish the knowledge and skills required of a classroom teacher teaching in a certification field for the first time and of the master teacher;

(2) to guide the design and delivery of teacher preparation programs; and

(3) to direct the development of certification examinations and other requirements for certificate issuance.

(c) Application. This section shall apply to certificates issued within the following classes:

(1) classroom teacher; and

(2) master teacher[, including master reading teacher].

(d) Policy. The State Board for Educator Certification (SBEC) shall approve certification standards based on the applicable Texas Essential Knowledge and Skills (TEKS) adopted by the State Board of Education (SBOE).

(e) Development. The SBEC shall develop the certification standards based on information provided by Texas educators, educator preparation program representatives, parents, and lay citizens. Before approving standards for a certificate, the SBEC shall make the proposed standards available for comment from the public, the SBOE, and the commissioner of education.

(f) Implementation. The Texas Education Agency (TEA) staff [SBEC's executive director and his or her designees] shall be primarily responsible for implementing the certification standards approved by the SBEC by having certification examinations developed or recommended to the SBEC on the basis of such standards. [The executive director shall provide the SBOE and commissioner of education with timely status reports regarding the implementation of approved certification standards.]

(g) Evaluation. The TEA staff [SBEC's executive director] shall periodically evaluate approved certification standards based, at a minimum, on any changes to the TEKS or the job functions and duties of the related certificate.

(h) Definition. For purposes of this section, "TEA staff" means staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

§232.4. Probationary Certificates.

(a) The following definitions apply, when used in this section [chapter], unless the rule or context in which the word or phrase is used requires a different definition. [:]

(1) ["]Alternative certification program--An [" means an] educator preparation program that offers an alternative route to certification as authorized under Chapter 228 of this title ([,] relating to Requirements for Educator Preparation Programs).

(2) ["]Core academic subject-- [" means] English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, history, geography, or the arts.

(3) Early Childhood--Children ages 3-5.

(4) [(3)] High-quality professional development--As [as] defined by the No Child Left Behind Act of 2001, 20 United States Code (USC), §7801 (2001, as amended) and its subsequent amend-

ments, which includes, but is not limited to, activities that are sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction; that advance the teacher's understanding of effective instructional strategies; that are developed with participation of teachers, principals, parents, and administrators; and that are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement.

(5) [~~(4)~~] Mentoring--As [~~as~~] defined under the No Child Left Behind Act of 2001, 20 USC [~~U. S. C.~~], §7801 and its subsequent amendments, which includes, but is not limited to, activities that consist of structured guidance and regular ongoing support for beginning educators, especially beginning teachers, as part of a developmental induction process designed to assist educators [~~the educator~~] in their professional growth and development. Beginning educator support is to be provided by an experienced educator who has been trained in mentoring.

(b) A probationary certificate may be issued for any class of certificate except educational aide.

(c) A probationary certificate may be issued to an individual who meets the conditions and requirements prescribed in this subsection.

(1) The individual must hold, unless otherwise approved by the State Board for Educator Certification (SBEC) [~~SBEC~~], at least a bachelor's degree from an institution of higher education that, when the degree was conferred, was accredited by a [~~or otherwise approved by a state department of education,~~] recognized governmental organization; [~~, or~~] a recognized regional accrediting organization as specified in Chapter 230, Subchapter Y, of this title (relating to Definitions); or an accrediting organization recognized by the Texas Higher Education Coordinating Board. [~~;~~]

(2) The individual must meet appropriate requirements prescribed in §230.413 of this title ([~~,~~] relating to General Requirements). [~~;~~]

(3) The individual must have been accepted to participate in an approved Texas educator preparation [~~alternative certification~~] program and has been assigned to serve in the subject area and at the grade level of certification sought. [~~;~~]

(4) The individual must receive mentoring and high-quality professional development that is sustained, intensive, and classroom-focused prior to and throughout the assignment. [~~;~~]

(5) The individual must pay the fee prescribed in [~~by~~] §230.436 of this title ([~~,~~] relating to Schedule of Fees for Certification Services). [~~Fees;~~]

(6) The individual must submit fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

[~~(6) The teacher in a core academic subject in a program supported with funds under Title I, Part A, of the No Child Left Behind Act of 2001, 20 U. S. C., §§6311-6339 must demonstrate mastery of each subject to be taught.~~]

[~~(A) at the public elementary school level, by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or~~]

[~~(B) at the public middle or high school level,~~]

~~(i)~~ ~~by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or~~]

~~(ii)~~ ~~have an academic major, graduate degree, or coursework equivalent to an academic major that complies with Section 21.050, Education Code, and comprises not fewer than 24 semester hours; and~~]

(7) The teacher in a core academic subject must demonstrate mastery of each subject to be taught: [~~-~~]

(A) at the public elementary school level (Early Childhood-Grade 6), by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title (relating to Assessment of Educators) [~~, relating to Educator Assessment~~]; or

(B) at the public middle or high school level (Grades 7-12): [~~,~~]

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter A, of this title [~~, relating to Educator Assessment~~]; or

(ii) by completing [~~have~~] an academic major, graduate degree, or coursework equivalent to an academic major that complies with the TEC, §21.050 [~~Section 21.050, Education Code~~], and comprises not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught.

(8) The teacher in a special education assignment must demonstrate mastery of each subject to be taught:

(A) at the public elementary school level (Early Childhood-Grade 6):

(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title for the assignment; and

(ii) by passing a special education Early Childhood-Grade 12 examination; or

(B) at the public middle or high school level (Grades 7-12):

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter A, of this title for the assignment; and

(ii) by passing a special education Early Childhood-Grade 12 examination; or

(iii) by completing an academic major, graduate degree, or coursework equivalent to an academic major comprised of not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught.

(d) A probationary certificate shall be valid for a 12-month period [~~one calendar year~~] from the date of issuance, except as otherwise provided under this title.

(1) A certificate may be extended for no more than two annual terms following expiration of the initial term. A probationary certificate may be extended for an annual term only if the Texas educator preparation [~~alternative certification~~] program, recommends extension and certifies that the holder is making satisfactory progress toward standard certification.

(2) Without obtaining initial, standard certification, an individual may not serve for more than three 12-month periods while holding:

(A) probationary certificates as described in this subsection;

(B) emergency certificates as specified in §230.512 of this title (relating to Emergency Certificates); or

(C) one-year certificates as specified in Chapter 230, Subchapter O, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

[(2) An individual may not serve for more than three school years without obtaining initial, standard certification.]

(e) The Texas Education Agency (TEA) staff [executive director of the State Board for Educator Certification or a designee] shall establish reasonable procedures to implement this section.

[(1) Subsection (c)(6) of this section shall be effective immediately.]

[(2) Subsection (c)(7) of this section shall be effective and shall supersede subsection (c)(6) of this section on June 30, 2006.]

(f) For purposes of this section, "TEA staff" means staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

§232.5. Temporary Teacher Certificates.

(a) A person may be temporarily certified to teach only in Grades [grade levels] 8-12 if the person:

(1) holds a baccalaureate or advanced degree from an accredited institution of higher education received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to at least one area of the curriculum as prescribed under the Texas Education Code (TEC), Chapter 28, Subchapter A[, Chapter 28, Texas Education Code]; [and]

(2) performs satisfactorily on the appropriate examinations prescribed under the TEC, §21.048 [Section 21.048, Texas Education Code]; [and]

(3) passes a criminal history background check by submitted fingerprints for review; and [.]

(4) submits fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(b) A certificate issued under this section is valid for a term not to exceed two academic years.

(c) A person may receive a certificate to teach only in a subject area of the curriculum prescribed under the TEC, Chapter 28, Subchapter A, [Chapter 28,] in which the person holds a baccalaureate or advanced degree from an institution of higher education with an academic major related to that area of the curriculum. Guidelines for determining the academic major related to the current Grades [grades] 8-12 certificate structure will be developed by the Texas Education Agency (TEA) staff [Executive Director].

(d) A person who applies for a temporary teaching certificate under this section shall pay a fee equal to that required of applicants for a probationary certificate under §230.436 of this title (relating to Schedule of Fees for Certification Services).

(e) A person who holds a certificate under this section may be employed by a school district only if the person and the school district agree that the person will be employed under a probationary contract for each year of the person's employment with the district.

(f) A school district employing a person who holds a certificate issued under this section must provide the State Board for Educator Certification (SBEC) [board] with evidence that it will provide the person with intensive support during the person's employment with the district, including:

(1) mentoring in which the mentoring program is modeled on research-based mentoring and induction programs;

(2) pre-service training that addresses the following areas before the first day of the start of the student academic year and ongoing appropriate professional development must include, but not be limited to, the following areas:

(A) school policies and relevant state and federal law;

(B) instructional methods and strategies that emphasize practical applications of the teaching-learning processes; [,]

(C) curriculum organization, planning, and evaluation, including the scope and sequence of the Texas Essential Knowledge and Skills in the subject area in which the teacher holds a certificate; [,] and

(D) basic principles and procedures of classroom management with emphasis on classroom discipline, using group and individual processes.

(g) Districts delivering the required intensive support for an educator holding the temporary teacher certificate must follow guidelines established by the TEA staff [Executive Director] with evidence indicating the ability to comply with the provisions of this chapter.

(h) A school district may require that a person who will be employed by the district and who holds a temporary teacher certificate issued under this section complete a teacher training program.

(i) At the end of the two years of employment, the person must apply to the SBEC [State Board for Educator Certification] for a standard certificate. The person must also be recommended by the current employing school district for certification. All employing school districts must provide evidence to the SBEC [board] that each district provided the [aforementioned] intensive support specified in subsection (f) of this section.

(j) A standard teaching certificate may [shall] be issued to a person under this section if:

(1) the person held a temporary teacher certificate issued under this section;

(2) the person has been continuously employed as a teacher of record in a public school district for two academic years; and

(3) the employing district(s) has (have) favorably reviewed the person's performance, including classroom performance and performance in any teacher training program(s). Each school district must predominately base the review of a person's performance on the increase in achievement of his or her [the] students [over which the person has had charge].

(k) At the end of the two years of employment, if a person is granted a standard certificate, the person may not apply for or receive another temporary certificate under this section [rule].

§232.6. Visiting International Teacher Certificates [Certificate].

(a) A visiting international teacher may be issued a visiting international teacher certificate valid for no more than three school years upon recommendation by a public school district participating in an officially recognized foreign teacher exchange program. The program shall be based upon an agreement made between the State Board for Educator Certification and/or the Texas Education Agency (TEA) and a ministry of education in a foreign country, or as in the case of Mexico, with a secretary of education from one of its states. Exchange programs

officially recognized by the United States Department of Education or the United States Department of State are also accepted.

(b) The visiting international teacher certificate will be issued to an individual who meets conditions and requirements presented in this subsection. [:] The individual must:

(1) [The individual must] meet appropriate requirements prescribed in §230.413 of this title ([,] relating to General Requirements);

(2) hold valid teaching credentials from country of origin based on the equivalent of at least a United States baccalaureate degree;

(3) demonstrate English language proficiency as described in §230.413 of this title;

(4) have criminal activity clearance from country of origin;

(5) demonstrate subject matter competence in subject(s) taught, as defined by the TEA [Texas Education Agency] in compliance with federal requirements; and

(6) pay appropriate fee prescribed by §230.436 of this title (relating to Schedule of Fees for Certification Services); and [.]

(7) submit fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the Texas Education Code, §22.0831.

(c) Participating school districts agree to provide the visiting international teachers with intensive supervision consisting of structured guidance and regular ongoing support through a mentoring program.

(d) The TEA staff [executive director or designee] shall establish reasonable procedures to implement this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800248

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 2, 2008

For further information, please call: (512) 475-1497

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SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §§232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, 232.890

The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession, and that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The proposed amendments implement the TEC, §§21.003(a); 21.031(a); and 21.041(b)(1)-(3) and (9).

§232.800. General Provisions.

(a) All educators should model the philosophy of life-long learning; therefore, participation in professional development activities is expected of all educators. Activities must focus on the need of each educator to continually update his or her knowledge of current content, best practices, research, and technology that is relevant to his or her individual role as an educator. The State Board for Educator Certification (SBEC) shall ensure that requirements for renewal and continuing professional education are flexible to allow each individual educator to identify the activities he or she [he/she] will complete to satisfy the SBEC's [Board's] requirements.

(b) This chapter provides the minimum requirements necessary to renew any class of certificate issued by the SBEC [board].

(c) Each individual who holds a standard certificate(s) is responsible for renewing the certificate(s) and paying a fee for late renewal. Failure to receive notice of the renewal requirement or deadline does not excuse the individual's obligation to renew or pay applicable fees.

(d) The SBEC [board] may deny renewal if the educator fails to comply with the requirements of this subchapter.

(e) The deadlines established for renewal, late renewals, and fees are established by procedures approved by the SBEC [board] and are subject to change.

(f) The SBEC [board] shall deny or cancel the renewal of an educator's certificate(s) if required by the Texas Education Code (TEC), §57.491, regarding defaults on guaranteed student loans.

(g) The SBEC [board] shall deny or cancel the renewal of an educator's certificate(s) suspended in accordance with the Texas Family Code, Chapter 232, [Family Code,] regarding failure to pay child support.

(h) If reissued, [Reinstatements of] Texas lifetime certificates surrendered in lieu of revocation or revoked at any time shall be reissued as standard certificates and subject to the requirements of this subchapter.

(i) Pursuant to the TEC, §21.003(a), an educator employed by a Texas public school district who fails to satisfy each of the requirements to renew his or her standard certificate(s) by the renewal date moves to inactive status and is ineligible for employment in a Texas public school district in a position for which a certificate is required until all appropriate requirements are satisfied.

§232.810. Voluntary Renewal of Current Texas Educators.

[~~(a)~~] Educators holding a valid Texas lifetime certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this subchapter.

[~~(b) The executive director shall adopt procedures to implement not later than September 1, 2999, voluntary renewal for current educators who hold a certificate(s) issued prior to September 1, 1999. Upon an individual's notification to the board of the intent to renew, the board shall issue the appropriate standard certificate(s). An educator eligible under subsection (a) for voluntary renewal may choose to renew his or her standard certificate(s) every five years or at any time may revert to the lifetime certificate.~~]

[~~(c) Not later than November 1 of each year, the executive director shall make available the number of educators voluntarily renewing certificates under this section during the preceding fiscal year.~~]

§232.820. Renewal Date for Certificates.

(a) The renewal date of a standard certificate shall be five years after the last day of the certificate holder's next birth month.

(b) If an educator holds multiple certificates, all certificates will be renewed concurrently and are subject to renewal after the last day of the certificate holder's birth month in the year in which the earliest certificate was issued.

(c) If an educator holds an educational aide certificate and qualifies for a standard classroom teaching certificate, the expiration date of the new standard teaching certificate shall be five years after the last day of the certificate holder's next birth month.

§232.830. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff [~~executive director~~] shall develop procedures to:

(1) notify educators at least six months [~~one year~~] prior to the expiration of their renewal period to the mailing address as specified in §230.431 of this title (relating to Procedures in General);

(2) consider requests for hardship exemptions from continuing professional education requirements;

(3) confirm compliance with all renewal requirements pursuant to this subchapter;

(4) notify educators who are not renewed due to noncompliance with this section; and

(5) verify that educators applying for reactivation of certificate(s) under §232.840(a) of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (b)(2)-(6) of this section.

(b) To be eligible for renewal, an educator must:

(1) satisfy continuing professional education requirements, pursuant to §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that has not been suspended, surrendered in lieu of revocation, or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases[~~, Including Enforcement of the Educator's Code of Ethics~~]);

(4) successfully resolve any criminal history, as defined by §249.16 [~~§230.414~~] of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes [~~Criminal Background~~]);

(5) not be in default on a guaranteed student loan, unless repayment arrangements have been made, pursuant to the Texas Education Code (TEC), §57.491;

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232; [~~and~~]

(7) pay the renewal fee, pursuant to §232.890 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation), which shall be a single fee regardless of the number of certificates being renewed ; and [~~.~~]

(8) submit fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(c) When renewing career and technical education [~~Career and Technology Education~~] certifications that require licensure, certification, or registration by a state or nationally recognized accrediting agency as a professional practitioner in one or more approved occupations for which instruction is offered, licensure, certification, or registration shall be current and in good standing.

(d) The TEA staff [~~executive director~~] shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

(e) The State Board for Educator Certification [~~board~~] shall stay the renewal of an educator's certificate(s) who fails to comply with subsection (b)(3) of this section, pending resolution of the disciplinary action. A certificate that is not suspended, surrendered in lieu of revocation, or revoked as a result of disciplinary action shall be renewed provided that all other requirements have been satisfied. Payment of a late fee shall not be required if resolution of any disciplinary action caused the renewal to occur after the renewal period had expired, except in cases involving subsection (b)(5)-(6) of this section.

§232.840. Inactive Status and Late Renewal.

(a) The certificate(s) of an educator holding a valid standard certificate who does not satisfy the requirements of this subchapter shall be placed on inactive status. At any time, the educator may apply under procedures adopted by the Texas Education Agency (TEA) staff [~~executive director~~] to have his or her certificate(s) reactivated and submit the reactivation fee. Reactivation of the educator's certificate(s) is subject to verification by the State Board for Educator Certification (SBEC) [~~board~~] that the educator is in compliance with §232.830(b)(2)-(6) and (c) of this title (relating to Requirements for Certificate Renewal). The renewal date of a reactivated certificate(s) shall be five years after the last day of the certificate holder's next birth month.

(b) Under procedures approved by the SBEC [~~board~~], the TEA staff [~~executive director~~] shall notify a person in writing of the reason(s) for denying the renewal, and the actions or conditions required for removal from inactive status.

(c) A person who satisfies the requirements for renewal no more than six months after the expiration date shall pay the appropriate renewal and late fees, or the certificate(s) will be placed on inactive status.

(d) If a person does not satisfy the required continuing professional education at the expiration of the renewal period, the person may have the certificate(s) removed from inactive status and reactivated by filing with the SBEC [~~board~~] on a form developed by the TEA staff [~~executive director~~] evidence of completion of the required continuing professional education and paying any applicable fee(s).

§232.850. Number and Content of Required Continuing Professional Education Hours.

(a) [~~Standard certificate.~~] The appropriate number of clock hours of continuing professional education (CPE), as specified in

§232.851 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period. Educators should complete a minimum of 20 clock hours of CPE each year of the renewal period. An educator renewing multiple certificates should complete a minimum of five CPE clock hours each year in the content area knowledge and skills for each certificate being renewed.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock hours.

(c) At least 80% of the CPE activities should be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including:

(1) content area knowledge and skills;

(2) professional ethics and standards of conduct;

(3) professional development, which should encompass topics such as the following:

(A) district and campus priorities and objectives;

(B) child development, including research on how children learn;

(C) discipline management;

(D) applicable federal and state laws;

(E) diversity and special needs of student populations;

(F) increasing and maintaining parental involvement;

(G) integration of technology into educational practices;

(H) ensuring that students read on or above grade level;

(I) diagnosing and removing obstacles to student achievement; and

(J) instructional techniques.

(d) Educators are encouraged to identify CPE activities based on results of the annual appraisal required under the Texas Education Code [~~TEC~~], Chapter 21, Subchapter H.

(e) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.851 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE hours. Educators must complete a minimum of one-fifth of the additional CPE hours for each full calendar year that the additional class of certificate is valid.

§232.860. Types of Acceptable Continuing Professional Education [~~(CPE)~~] Activities.

The following are acceptable types of continuing professional education (CPE) activities:

(1) [~~(a)~~] participating [~~Participation~~] in institutes, workshops, seminars, conferences, in-service or staff development activities given by an approved provider or sponsor, pursuant to §232.872 of this title (relating to Provider Registration Requirements), which are related to or enhance the professional knowledge and skills of the educator. Staff development activities completed through accredited public and private schools in other states, United States territories, and countries outside Texas may be accepted;

(2) [~~(b)~~] completing [~~Completion of~~] undergraduate courses in the content area knowledge and skills related to the certificate(s) being renewed, graduate courses, or training programs which are taken through an accredited institution of higher education as recognized by the Texas Higher Education Coordinating Board or as outlined in §230.801[~~(8)~~] of this title (relating to Definitions); [~~.~~]

(3) [~~(c)~~] participating [~~Participation~~] in interactive distance learning, video conferencing, or on-line activities or conferences; [~~.~~]

(4) [~~(d)~~] participating in an independent [~~Independent~~] study, not to exceed 20% of the required clock hours, which may include self-study of relevant professional materials (books, journals, periodicals, video and audio tapes, computer software, and on-line information) or authoring a published work; [~~.~~]

(5) [~~(e)~~] developing [~~Development of~~] curriculum or CPE training materials; [~~.~~]

(6) [~~(f)~~] teaching [~~Teaching~~] or presenting a CPE activity described in subsection (a) or (b) of this section, not to exceed 10% of the required clock hours; [~~.~~]

(7) [~~(g)~~] providing [~~Providing~~] professional guidance as a mentor to another educator, not to exceed 30% of the required clock hours; and [~~.~~]

(8) [~~(h)~~] serving [~~Serving~~] as an assessor under §241.35 [~~Chapter 241, §241.35~~] of this title (relating to Assessment Process Definition and Approval of Individual Assessments [~~the Principal Certificate~~]), not to exceed 10% of the required clock hours.

§232.870. Pre-Approved Professional Education Provider or Sponsor.

(a) The following may provide and/or sponsor continuing professional education (CPE) activities and must comply with the provisions of §232.872 of this title (relating to Provider Registration Requirements). Pre-approved providers include:

(1) State Board for Educator Certification;

(2) Texas Education Agency;

(3) accredited institutions of higher education as outlined in §230.801[~~(8)~~] of this title (relating to Definitions);

(4) regional education service centers;

(5) Texas public school districts - to be creditable toward CPE requirements, school district in-service and/or staff development activities must be developed, approved, and conducted in accordance with the Texas Education Code, §21.451;

(6) private schools, as defined in [~~by~~] §230.801 of this title; and

(7) professional membership associations or non-profits that have offered professional development in Texas for at least five years and have tax-exempt status under 26 United States Code, §501(c)(3)-(6), or a state association affiliated with a national association with tax-exempt status. [~~; and~~]

[~~(8) entities approved under §232.871 of this title (relating to Approval of Private Companies, Private Entities, and Individuals).~~]

(b) If private companies, entities, and individuals provide CPE activities on behalf of a pre-approved provider, the pre-approved provider is responsible for ensuring compliance with quality and documentation requirements of §232.872 of this title.

§232.871. Approval of Private Companies, Private Entities, and Individuals.

Private companies, private entities, and individuals who wish to provide continuing professional education (CPE) for Texas educators and

administrators must register with the State Board for Educator Certification and be approved under §232.872 of this title (relating to Provider Registration Requirements).

(1) The Texas Education Agency staff [~~executive director~~] shall develop procedures to approve as providers and/or sponsors any other person, agency, or entity seeking to offer CPE activities pursuant to the requirements of this subchapter.

(2) It is the responsibility of the educator to verify the approval status of any CPE provider prior to completion of the CPE activities.

§232.872. Provider Registration Requirements.

(a) Procedures adopted by the Texas Education Agency (TEA) staff [~~executive director~~] require all pre-approved and all other continuing professional education (CPE) providers or sponsors to register with the State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the TEA staff [~~executive director~~] in order to accomplish any or all of the following, as applicable:

(1) notify the TEA staff [~~executive director~~] of the intent to offer CPE activities;

(2) affirm compliance with all applicable statutes and rules;

(3) prohibit discrimination in the provision of CPE activities to any certified educator;

(4) document that each CPE activity:

(A) complies with applicable SBEC rules codified in the Texas Administrative Code, Title 19, Part 7;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.850(d) of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock hours; and

(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a list of CPE activities provided that includes a list of attendees, the date and content of the activity, and the number of clock hours that count toward satisfying CPE requirements.

(d) The failure of the TEA staff [~~executive director's failure~~] to approve a provider or sponsor does not entitle that provider or sponsor to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The TEA staff [~~executive director~~] shall develop procedures to receive and investigate complaints against a provider or sponsor alleging noncompliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the TEA staff [~~executive director~~] may withdraw the approval granted under this section to the provider or sponsor.

§232.880. Verification of Renewal Requirements.

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) By the date renewal is required, the educator shall verify through an affidavit in a manner determined by the Texas Education Agency (TEA) staff [~~executive director~~] whether he or she is in compliance with renewal requirements, including CPE. If it is determined that an educator falsified any information submitted on the affidavit, the educator could be subject to criminal liability and educator certification sanction [~~under §230.414 of this title (relating to Certificates for Persons with Criminal Background)~~].

(c) The TEA staff [~~executive director~~] at any time may review the documentation required for renewal under this subchapter.

§232.890. Fees Payable Upon Certificate Renewal or Reactivation.

The Texas Education Agency staff [~~executive director~~] shall submit to the State Board for Educator Certification (SBEC) [~~board~~] the recommended amount of each fee listed in paragraphs (1)-(5) [~~(4)~~] of this section:

(1) renewal fee--payable at the time of renewal to support the functions of the SBEC [~~Board~~], including renewal, investigations, and enforcement; [~~.~~]

(2) reactivation of inactive certificate--payable upon application to reactivate; [~~.~~]

(3) late renewal fee; [~~.~~]

(4) reinstatement following restitution for default on student loan or nonpayment of child support; and [~~.~~]

(5) national criminal history review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800249

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 2, 2008

For further information, please call: (512) 475-1497

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19 TAC §232.900

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a

school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession, and that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The proposed repeal implements the TEC, §§21.003(a); 21.031(a); and 21.041(b)(1)-(3) and (9).

§232.900. Pilot Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800250

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 2, 2008

For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.9, 233.11 - 233.14

The State Board for Educator Certification (SBEC) proposes amendments to §§233.1 - 233.9 and 233.11 - 233.14, concerning categories of classroom teaching certificates. The proposed amendments result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031(b), states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of the state.

To implement statute, the SBEC rules in 19 TAC Chapter 233 establish the general categories of classroom teaching certificates, specific grade levels and subject areas of classroom certificates, and assignments that may be taught by the holder of each certificate.

The Texas Education Agency (TEA) staff presented draft proposed amendments to the SBEC at the July 2007 meeting and at the November 2007 SBEC meeting following a September 27, 2007, stakeholder meeting. The SBEC proposes the following amendments to 19 TAC Chapter 233 that would clarify the categories and requirements for classroom teaching certificates, including changes to 19 TAC §233.1, General Authority, that would specify the applicable requirements to be issued a certificate, such as the passing of an examination. The following proposed changes would also establish certificates for Bilingual Generalist: Early Childhood-Grade 6 in 19 TAC §233.6 and English as a Second Language Generalist: Early Childhood-Grade 6 in 19 TAC §233.7.

Language would be revised in §233.1(e) to clarify that a person seeking an initial certificate must pass the appropriate grade level of pedagogy and professional responsibility certification examination in addition to passing the appropriate content subject examination(s) for the certification sought. Language would also be added in subsection (e) that would authorize an educator to use a passing score on an examination to obtain a certificate within two years (rather than one year) after the elimination of the examination in the case of catastrophic illness of the educator or an immediate family member or due to an educator's military service.

Language would be revised in §233.1 to add subsection (f) to address technology applications. The proposed amendment would allow the holder of a certificate valid for Grades 4-8 to teach technology applications in those grade levels.

Language would be added in §233.2 to add technology applications to the list of subjects the holder of a Generalist: Early Childhood-Grade 4 or Generalist: Early Childhood-Grade 6 certificate can teach. The TEA staff have verified that the technology application standards are included in the Pedagogy and Professional Responsibilities Generalist: Early Childhood-Grade 4 certification examination.

As a result of issues raised regarding teaching assignments at the September 27, 2007, stakeholder meeting, the following changes are also proposed.

Language would be added to §233.3(d) to clarify that the English Language Arts and Reading: Grades 8-12 certificate holder may not teach Journalism and Speech courses. Following the stakeholder meeting, the TEA staff reviewed the English Language Arts and Reading: Grades 8-12 certification test standards and determined that none of the Journalism content knowledge and standards were addressed in the certification examination and only 10 percent of the examination addressed the Speech content knowledge and standards.

Language would be revised in §233.4(a) to include Algebra I for high school credit. Following the stakeholder meeting, the TEA staff reviewed the Mathematics: Grades 4-8 certification test standards and determined that 21 percent of the Algebra content knowledge and standards were addressed in the certification examination.

Language would be added to §233.12(g) to clarify that the Business Education: Grades 6-12 certificate holder may not teach Economics courses. Following the stakeholder meeting, the TEA staff reviewed the Business Education: Grades 6-12 certification test standards and determined that only four to

seven percent of the Economics content knowledge and standards were addressed in the certification examination.

In addition, the section title for §233.5 would be revised to include computer science.

Technical Changes

Throughout Chapter 233, numerous grammatical and technical changes would be made. Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements.

Dr. Raymond Glynn, acting deputy commissioner for school district leadership and educator quality, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Dr. Glynn has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of the proposed amendments would be the continuation of the provision of categories of classroom teaching certificates and clarification of the courses that can be taught by the holders of these certificates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the TEC, §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language.

The proposed amendments implement the TEC, §§21.003(a); 21.031; and 21.041(b)(1), (2), (4), and (6).

§233.1. General Authority.

(a) In this chapter, the State Board for Educator Certification (SBEC) [~~(Board or SBEC)~~] establishes separate certificate categories within the certificate class for the classroom teacher established under §232.2(b)(3) [~~§232.510(b)(3)~~] of this title (relating to Classes of Certificates). [~~This chapter is adopted under Education Code, Sections 21.039(3) (relating to authority of Board's executive director to issue educator certificates), 21.041(b)(1) (relating to the Board's rulemaking authority for the regulation of educators and general administration of SBEC statutes), and 21.041(b)(2) (relating to the Board's rulemaking authority to specify classes of educator certificates).~~]

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, § [~~Section~~] 21.003(a), [~~Education Code,~~] a certificate category identifies:

(1) the content area or the special student population the holder may teach;

(2) the grade levels the holder may teach; and

(3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in [~~by~~] this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills [~~(TEKS)~~] curriculum adopted by the State Board of Education [~~under this title~~].

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category[~~, including passing the appropriate examination prescribed by SBEC~~]. A person seeking an initial certification must pass the appropriate grade level of pedagogy and professional responsibility certification examination and the appropriate content subject examination(s) for the certification sought as established by the SBEC. A person completing requirements for a standard certificate using a score on an examination that has been eliminated must apply for certification not later than one year following the examination date upon which the person passed the examination. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.

(f) A holder of a certificate valid for Grades 4-8 may teach technology applications in Grades 4-8 if integrated within an academic course or through interdisciplinary methodology in those subjects that the individual is certified to teach. The school district is responsible for ensuring that the educator has the appropriate technology applications knowledge and skills to teach the course(s) to which he or she is assigned. If Technology Applications is taught as a separate course, the educator shall be required to hold an appropriate technology applications certificate as specified in §233.5 of this title (relating to Technology Applications and Computer Science).

§233.2. Generalist.

(a) Generalist: Early Childhood-Grade 4. The Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Early Childhood-Grade 4 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-4:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science; [~~and~~]

(8) Social Studies; and [~~.~~]

(9) Technology Applications.

(b) Generalist: Grades 4-8. The Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Grades 4-8 certificate may teach the following content areas in Grades 4-8:

(1) English Language Arts and Reading;

(2) Mathematics;

(3) Science; and

(4) Social Studies.

(c) Generalist: Early Childhood-Grade 6. The Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the Generalist: Early Childhood-Grade 6 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-6:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science; [~~and~~]

(8) Social Studies; and [~~.~~]

(9) Technology Applications.

(d) The holder of the Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4, or English as a Second Language Generalist: Early Childhood-Grade 4 certificates may be assigned to teach the content areas specified in subsection (a) of this section in a self-contained classroom in Grades 5 and 6 during the school years 2003-2004, 2004-2005, 2005-2006, and 2006-2007. Standard certificate holders assigned prior to the 2007-2008 school year, in accordance with this subsection, may remain in these assignments, at the discretion of the employing school districts, through the 2009-2010 school year.

(1) The superintendent of a school district or designee must report the assignment to the State Board for Educator Certification in a manner approved by the Texas Education Agency staff.

(2) The superintendent or designee must affirm:

(A) the school district's efforts to recruit and employ a fully certified and qualified teacher for the assignment, including the reason for determining as unqualified each appropriately certified applicant. The district must maintain documentation of its recruiting efforts for a period of two years from the date of the making of the record;

(B) that the holder of one of the certificates specified in this subsection will be provided with a trained mentor for the entire period of the assignment to help the person perform effectively in the assignment; and

(C) that written consent has been obtained from the holder of one of the certificates specified in this subsection prior to assignment to self-contained classes in Grades 5 or 6.

(i) A teacher who refuses to consent to assignment under the provisions of this subsection may not be terminated, nonrenewed, or otherwise retaliated against because of the teacher's refusal to consent to the assignment.

(ii) A teacher's refusal to consent to the assignment under the provisions of this subsection shall not impair a school district's right to implement a necessary reduction in force or other personnel action in accordance with school district policy.

(3) Individuals assigned to self-contained classrooms in Grades 5 and 6 under the provisions of this subsection are subject to the provisions of the Texas Education Code, §21.057.

(4) The provisions of this subsection shall expire on August 1, 2010. The provisions of this subsection include 2009-2010 summer school programs and exclude programs beginning in fall 2010.

§233.3. English Language Arts and Reading; Social Studies.

(a) English Language Arts and Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 4-8 certificate may teach English language arts and reading in Grades 4 - [~~through~~] 8.

(b) Social Studies: Grades 4-8. The Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 4-8 certificate may teach social studies in Grades 4 - [~~through~~] 8.

(c) English Language Arts and Reading/Social Studies: Grades 4-8. The English Language Arts and Reading/Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading/Social Studies: Grades 4-8 certificate may teach English language arts and reading, and social studies in Grades 4 - [~~through~~] 8.

(d) English Language Arts and Reading: Grades 8-12. The English Language Arts and Reading: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 8-12 certificate may teach English language arts and reading in Grade 8 and all English language arts and reading courses in Grades 9 - [~~through~~] 12, excluding journalism and speech courses.

(e) Social Studies: Grades 8-12. The Social Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 8-12 certificate may teach social studies in Grade 8 and all social studies and economics courses in Grades 9 - [~~through~~] 12.

(f) History: Grades 8-12. The History: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the History: Grades 8-12 certificate may teach social studies in Grade 8 and all history courses in Grades 9 - [~~through~~] 12.

(g) Journalism: Grades 8-12. The Journalism: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: Grades 8-12 certificate is eligible to teach all journalism [~~Journalism~~] courses in Grades 8-12.

(h) Speech: Grades 8-12. The Speech: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Speech: Grades 8-12 certificate is eligible to teach all speech [~~Speech~~] courses in Grades 8-12.

§233.4. Mathematics; Science.

(a) Mathematics: Grades 4-8. The Mathematics: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 4-8 certificate may teach mathematics in Grades 4 - [~~through~~] 8, including Algebra I for high school credit.

(b) Science: Grades 4-8. The Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 4-8 certificate may teach science in Grades 4 - [~~through~~] 8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: Grades 4-8 certificate may teach mathematics and science in Grades 4 - [~~through~~] 8.

(d) Mathematics: Grades 8-12. The Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 8-12 certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9 - [~~through~~] 12.

(e) Science: Grades 8-12. The Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 8-12 certificate may teach science in Grade 8 and all science courses, including Principles of Technology I and II, and all health science technology [~~Health Science Technology~~] courses for which science credit is given in Grades 9 - [~~through~~] 12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency (TEA)- approved workshop for beginning principles of technology teachers prior to teaching the course.

(f) Life Science: Grades 8-12. The Life Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Life Science: Grades 8-12 certificate may teach science in Grade 8 and all biology courses, environmental and aquatic sciences, and all health science technology [~~Health Science Technology~~] courses for which science credit is given in Grades 9 - [~~through~~] 12.

(g) Physical Science: Grades 8-12. The Physical Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: Grades 8-12 certificate is eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, Principles of Technology I and II, and Scientific Research and Design, in Grades 9 - [~~through~~] 12. All teachers assigned to teach Principles of Technology I and II shall participate in a TEA- [~~Texas Education Agency~~] approved workshop for beginning principles of technology teachers prior to teaching the course.

(h) Physics/Mathematics: Grades 8-12. The Physics/Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Physics/Mathematics: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grade 8, and all physics courses, Principles of Technology I and II, and Scientific Research and Design in Grades 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a TEA- [~~Texas Education Agency~~] approved workshop for beginning principles of technology teachers prior to teaching the course.

(i) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry, and all of the technology education [~~Technology Education~~] courses, including Principles of Technology I and II, in Grades 8-12, and Scientific Research and Design in Grades 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a TEA [~~Texas Education Agency~~] -approved workshop for beginning principles of technology teachers prior to teaching the course.

(j) Chemistry: Grades 8-12. The Chemistry: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: Grades 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12.

§233.5. Technology Applications and Computer Science.

(a) Technology Applications: Grades 8-12. The Technology Applications: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Technology Applications: Grades 8-12 certificate may teach Technology Applications in Grade 8 and the following technology applications courses in Grades 9 - [~~through~~] 12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications.

(b) Technology Applications: Early Childhood-Grade 12. The Technology Applications: Early Childhood [~~EC~~] - Grade 12 certificate may be issued no earlier than September 1, 2002. The holder of the Technology Applications: Early Childhood-Grade 12 certificate may teach the technology applications curriculum in prekindergarten [~~pre-kindergarten~~] , kindergarten, and Grades [~~grades~~] 1-12, with the exception of Computer Science [~~computer science~~] I and II.

(c) Computer Science: Grades 8-12. The Computer Science: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Computer Science: Grades 8-12 certificate may teach Computer Science [~~computer science~~] I and II in Grades 8 - [~~through~~] 12.

§233.6. Bilingual Education.

(a) Bilingual Generalist: Early Childhood-Grade 4. The Bilingual Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach in a bilingual prekindergarten [~~pre-kindergarten~~] program, a bilingual kindergarten program, and a bilingual program in Grades 1 - [~~through~~] 4. The holder of the Bilingual Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach the same content areas, in either a bilingual or general education program, as the holder of the Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach under §233.2(a) of this title (relating to Generalist). The holder of the Bilingual Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may also teach in an English as a second language program in Early Childhood [~~EC~~] -Grade 4.

(b) Bilingual Generalist: Grades 4-8. The Bilingual Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Generalist: Grades 4-8 certificate may teach in a bilingual program in Grades 4 - [~~through~~] 8. The holder of the Bilingual Generalist: Grades 4-8 certificate may teach the same content areas, in either a bilingual or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title. The holder of the Bilingual Generalist: Grades 4-8 certificate may also teach in an English as a second language program in Grades 4-8.

(c) Bilingual Generalist: Early Childhood-Grade 6. The Bilingual Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may teach in a bilingual prekindergarten program, a bilingual kindergarten program, and a bilingual program in Grades 1-6. The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may teach the same content areas, in either a bilingual or general education program, as the holder of the Generalist: Early Childhood-Grade 6 certificate may teach under §233.2(c) of this title. The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may also teach in an English as a second language program in Early Childhood-Grade 6.

(d) [~~(c)~~] Bilingual Education Supplemental: Early Childhood-Grade 4. The Bilingual Education Supplemental: Early Childhood [~~EC~~] - Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Education Supplemental: Early Childhood [~~EC~~] - Grade 4 certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental: Early Childhood [~~Grades EC~~] - Grade 4 certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

(e) [~~(d)~~] Bilingual Education Supplemental: Grades 4-8. The Bilingual Education Supplemental: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Education Supplemental: Grades 4-8 certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental: Grades 4-8 certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

§233.7. English as a Second Language.

(a) English as a Second Language Generalist: Early Childhood-Grade 4. The English as a Second Language Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach in an English as a second language program in prekindergarten- [~~pre-kindergarten through~~] Grade 4. The holder of the English as a Second Language Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Early Childhood [~~EC~~] - Grade 4 certificate may teach under §233.2(a) of this title (relating to Generalist).

(b) English as a Second Language Generalist: Grades [~~Grade~~] 4-8. The English as a Second Language Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach in an English as a second language program in Grades 4-8. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title.

(c) English as a Second Language Generalist: Early Childhood-Grade 6. The English as a Second Language Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach in an English as a second language program in prekindergarten-Grade 6. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Early Childhood-Grade 6 certificate may teach under §233.2(c) of this title.

(d) [~~(c)~~] English as a Second Language Supplemental. The English as a Second Language Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Supplemental certificate may teach in an English as a second language [~~Second Language~~] program at the same grade levels and in the same content area(s) of the holder's base certificate.

§233.8. Special Education.

(a) Special Education: Early Childhood-Grade 12. The Special Education: Early Childhood-Grade 12 certificate may be issued no earlier than September 1 , [~~,~~] 2003. The holder of the Special Education: Early Childhood-Grade 12 certificate may teach at any level of a basic special education instructional program serving eligible students 3-21 years of age, unless otherwise specified in [~~Chapter 89, Subchapter AA,~~] §89.1131 of this title [~~,~~] (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(b) Special Education Supplemental. The Special Education Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the Special Education Supplemental certificate may teach in a special education instructional program serving eligible students at the same grade levels and in the content area(s) of the holder's base certificate, unless otherwise specified in [~~Chapter 89, Subchapter AA,~~] §89.1131 of this title [~~, relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel~~].

(c) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title [~~(relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel)~~].

(d) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title [~~(relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel)~~].

§233.9. Gifted and Talented.

Gifted and Talented Supplemental. The Gifted and Talented Supplemental certificate may be issued no earlier than September 1, 2004. The holder of the Gifted and Talented Supplemental certificate may teach students in a gifted [~~Gifted~~] and talented [~~Talented~~] program at the same grade levels and in the same content area(s) of the holder's base certificate.

§233.11. Health.

Health: Early Childhood-Grade 12. The Health: Early Childhood [~~EC~~] -Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Health: Early Childhood [~~EC~~] -Grade 12 certificate may teach health in a prekindergarten [~~pre-kindergarten~~] program, in kindergarten, and in Grades [~~grades~~] 1-12.

§233.12. Career and Technical [~~Technology~~] Education (Certificates not requiring experience and preparation in a skill area).

(a) Technology Education : [~~,~~] Grades 6-12. The Technology Education: Grades 6-12 certificate may be issued no earlier than September 1, 2004. The holder of the Technology Education: Grades 6-12 certificate may teach all technology education [~~of the Technology Education~~] courses, including Principles of Technology I and II, in Grades [~~grades~~] 6-12. All teachers assigned to teach Principals of Technology I and II shall participate in a Texas Education Agency (TEA)-approved workshop for beginning principles of technology teachers prior to teaching the course. Technology education teachers must also complete six semester hours of college physics prior to assignment to teach Principles of Technology I and II.

(b) Family and Consumer Sciences, Composite : Grades [~~, grades~~] 6-12. The Family and Consumer Sciences, Composite: Grades 6-12 certificate may be issued no earlier than September 1, 2004. The holder of the Family and Consumer Sciences, Composite: Grades 6 [~~8~~] -12 certificate may teach all family and consumer sciences [~~Family and Consumer Sciences~~] courses, including Skills for Living, in Grades [~~grades~~] 6-12.

(c) Human Development and Family Studies : Grades [~~, grades~~] 8-12. The Human Development and Family Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Human Development and Family Studies: Grades 8-12 certificate may teach the following family and consumer science [~~Family and Consumer Science~~] courses in Grades [~~grades~~] 8-12: Individual and Family Life, Family Health Needs, Services for Older Adults, Child Development, Preparation for Parenting, and Child Care and Guidance, Management, and Services.

(d) Hospitality, Nutrition, and Food Sciences : Grades [~~, grades~~] 8-12. The Hospitality, Nutrition, and Food Sciences: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Hospitality, Nutrition, and Food Sciences: Grades 8-12 certificate may teach the following family and consumer science [~~Family and Consumer Science~~] courses in Grades [~~grades~~] 8-12: Nutrition and Food Science, Food Science and Technology, Institutional Maintenance Management and Services, Hospitality Services, and Food Production, Management, and Services.

(e) Teachers assigned to Career Investigation and Career Connections courses must hold teacher certification in any of the Career and Technology Education program areas, and shall participate in a TEA- [~~Texas Education Agency~~] approved two - hour workshop for beginning Career Investigation and Career Connections teachers prior to teaching the course. Teachers must also attend and participate in a TEA- [~~Texas Education Agency~~] sponsored Career and Technology Education Professional Development Conference prior to assignment.

(f) Agricultural Science and Technology: Grades 6-12. The Agricultural Science and Technology: Grades 6-12 certificate may be issued no earlier than September 1, 2005. The holder of the Agricultural Science and Technology: Grades 6-12 certificate is eligible to teach all agricultural science and technology [~~Agricultural Science and Technology~~] courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

(g) Business Education: Grades 6-12. The Business Education: Grades 6-12 certificate may be issued no earlier than November 8, 2006. The holder of the Business Education: Grades 6-12 certificate may teach all business education [~~Business Education~~] courses in Grades 6-12 , excluding economics courses. Teachers are encouraged to attend and participate in a TEA- [~~Texas Education Agency~~] sponsored Career and Technology Education Professional Development Conference during the first year of assignment.

§233.13. Physical Education.

Physical Education: Early Childhood-Grade 12. The Physical Education: Early Childhood [~~EC~~] -Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Physical Education: Early Childhood [~~EC~~] -Grade 12 certificate may teach physical education in a prekindergarten [~~pre-kindergarten~~] program, in kindergarten, and in Grades [~~grades~~] 1-12.

§233.14. Career and Technical [~~Technology~~] Education (Certificates requiring experience and preparation in a skill area).

(a) All individuals seeking a career and technology education certificate specified in this section must have prior work experience and preparation in a skill area approved by an educator preparation program approved to prepare teachers for the career and technology education certificate sought in accordance with the provisions of §230.483(g) of this title (relating to Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation).

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all marketing education [~~Marketing Education~~] courses in Grades 8-12. The Marketing Education: Grades 8-12 certificate requires two years of wage-earning experience approved by the educator preparation program in one or more of the marketing occupations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800251

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: March 2, 2008

For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 628. ETHICAL CONDUCT

22 TAC §628.4

The Board of Tax Professional Examiners proposes an amendment to §628.4, concerning Conflict of Interest. This amendment is intended to ensure property tax professionals maintain strong rules of ethical conduct.

David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Montoya also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be

to conform the board rule to better protect the public. There will be no effect on small or micro businesses.

Mr. Montoya also has determined that the probable economic cost to persons required to comply with the amendment for the first five years will be zero because the amendment merely provides for a more thorough review of the reinstatement application.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 29, 2008. Comments should be addressed to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted.

The amendment is proposed under the authority of Texas Civil Statutes, Texas Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to promulgate rules consistent with the Statute.

No other article, statute or code is affected by this proposed amendment.

§628.4. Conflict of Interest.

A registrant or other person subject to these rules:

(1) - (5) (No change.)

(6) shall not serve as a tax agent for any party; by serving that party for any form of compensation or any benefit through the collection of data, appraisal of property, presentations, argument, appearances, or other exercise of influence in the property tax system[~~, unless such service does not involve properties in the purview of the appraisal district or tax office that employs the registrant~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800208
David Montoya
Executive Director
Board of Tax Professional Examiners
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 305-7300

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.2, 801.17, 801.18, 801.41 - 801.54, 801.72, 801.92, 801.112 - 801.114, 801.142, 801.143, 801.174, 801.201, 801.232, 801.235, 801.236, 801.261 - 801.264, 801.266, 801.291, 801.294, 801.296, 801.297, 801.301, 801.332, and 801.351 and new §801.115 and §801.303, concerning the licensure and regulation of marriage and family therapists.

BACKGROUND AND PURPOSE

The adopted amendments and new sections are necessary to carry out the requirements of Occupations Code, Chapter 502. The board finds that adoption of the new rules and amendment of existing rules are necessary for the efficient regulation of the practice of marriage and family therapy and for the protection of the public.

SECTION BY SECTION SUMMARY

Amendments to §801.2 are proposed to improve the current definition of accredited institutions to include accredited institutions and programs defined as an institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council of Higher Education Accreditation; to add a definition of endorsement; to expand the definition of a therapist to include a licensed marriage and family therapist associate; and, to renumber the section accordingly.

The amendment to §801.17 is proposed to identify the licenses for which the board shall prepare and provide a license certificate.

Amendments to §801.18 are proposed to base the late renewal fees for up to and after 90 days on a percentage of the current license renewal fee, instead of on a percentage of the license examination fee.

The amendment to §801.41 is proposed to replace the general word "therapist" with the more specific term "licensee."

Amendments to §801.42 are proposed to improve language and to add parent coordination, parent coordination training, parent education and parent training and life coaching to professional therapeutic services which may be provided by marriage and family therapists and associates.

Amendments to §801.43 are proposed to clarify language; to require licensees to make reasonable efforts to prevent others from making misrepresentations regarding a licensee's professional qualifications and services; and to require a licensee to indicate his or her status as a licensed marriage and family therapist or licensed marriage and family therapist associate when providing professional services.

Amendments to §801.44 are proposed to improve language; to require licensees to provide professional services only in the context of a professional relationship; to require licensees to obtain appropriate consent for treatment before providing services and make reasonable efforts to determine whether the conservatorship, guardianship or parental rights of the client has been modified by a court; to require licensees to make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the client's confidentiality; to specify that dual relationships are to be

avoided and that licensees have the responsibility to ensure the welfare of the client is a dual relationship arises; to specify that licensees may not lend or borrow money from or lend money or items of value to clients or relatives of clients; to require that licensees shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client; to require licensees to base all services on an assessment, evaluation or diagnosis of the client; to require licensees to evaluate a client's progress on a continuing basis to guide service delivery and to make use of supervision and consultation as indicated by the client's needs; and to require licensees to not promote or encourage the illegal use of alcohol or drugs by clients.

Amendments to §801.45 are proposed to improve language and to replace the current list of examples of sexual contact with a reference to and inclusion of behaviors described in the Texas Penal Code, §21.01.

Amendments to §§801.46, 801.50, 801.52, 801.54, 801.201, 801.232, 801.236, 801.261, 801.262, and 801.291 are proposed to replace the general term "therapist" with the more specific term "licensee."

Amendments to §801.47 are proposed to improve language and specify prohibitions against licensees' use and promotion of illegal drugs and alcohol.

Amendments to §801.48 are proposed to improve language; to specify licensees' responsibilities concerning record keeping, maintaining confidentiality and the appropriate release of client records to authorized persons and reporting of client information required by Texas statutes; to clarify what client records must include; to clarify that client records are to be maintained for a minimum of 5 years for an adult client and for 5 years beyond the age of 18 for a minor client; and to specify that a licensee in independent practice must establish a plan for custody and control of the licensee's client's mental health records in the event of death, incapacity, or termination of services of the licensee; and requires the reporting of sexual exploitation of a client by another licensee.

Amendments to §801.49 are proposed to improve language and to require licensees to report changes in home or business addresses or telephone numbers and the granting of an academic degree relevant to the practice of marriage and family therapy to the board within 30 days of the change.

Amendments to §801.51 are proposed to allow licensees to provide clients with mandatory information about where to file complaints by placing the information on a client registration form.

Amendments to §801.53 are proposed to improve language; to specify that licensees may not use information in advertising and announcements that is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable, and to provide a list of types of such advertising; and requires provisional licensees to indicate that status on all advertisements.

Amendments to §801.72 are proposed to improve language and to specify that an application that is not completed one year past the date an application is opened is voided.

Amendments to §801.92 are proposed to improve language and to add a criminal conviction per §801.332 as a basis for denial of a license.

Amendments to §801.112 are proposed to improve language; to provide specifics regarding degrees that meet the academic requirements for licensure, subject to board review of the applicant's practicum if the degree in marriage and family therapy is not from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) and course equivalency review if a degree is in a related field; and to require that degrees and coursework received at foreign universities is acceptable only if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program.

Amendments to §801.113 are proposed to improve language and to provide examples of degrees in a related mental health field.

Amendments to §801.114 are proposed to clarify the length of a supervised clinical practicum.

New §801.115 are proposed to provide for substitution of licensed experience as a marriage and family therapist in another jurisdiction for having met the academic qualifications for licensure, including the practicum within certain parameters.

Amendments to §801.142 are proposed to improve language; to provide that up to 50 hours of the 200 hours of supervision may occur via electronic media; provides that supervision and supervised clinical experience completed in another jurisdiction is accepted by endorsement only; provides for a substitution of licensed experience in another jurisdiction for supervised clinical experience; and to renumber the section accordingly.

Amendments to §801.143 are proposed to improve language and reorder the section.

The amendment to §801.174 are proposed to specify that the board shall accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the state of California marriage and family therapy licensure examination.

Amendments to §801.235 are proposed to define the amount of the fee for renewing a license late.

Amendments to §801.263 are proposed to improve language and to specify that a licensed marriage and family therapist is required to complete 15 hours of continuing education per renewal period.

Amendments to §801.264 are proposed to replace the general term "therapist" with the more specific term "licensee" and to correct the name of the Texas Association for Marriage and Family Therapy.

Amendments to §801.266 are proposed to improve language; to remove continuing education for participation in supervision as a licensed marriage and family therapist associate; and to renumber the section accordingly.

Amendments to §801.294 are proposed to improve language.

Amendments to §801.296 are proposed to improve language to reflect current legal, policy and operational procedures regarding complaint procedures and establish time limits for filing complaints.

Amendments to §801.297 are proposed to specify that the board may impose monitoring of a licensee who may pose a potential threat to public health or safety as a condition of initial or contin-

ued licensure and impose conditions that are not considered to be a formal disciplinary action.

The amendment to §801.301 is proposed to improve language.

New §801.303 is proposed to specify that the board may resolve pending complaints by issuance of formal advisory letters that are not considered to be disciplinary actions and which do not entitle a licensee to a formal hearing; however the licensee may submit a written response to be included in the licensing record.

Amendments to §801.332 are proposed to replace the general term "therapist" with the more specific term "licensee" and other clarifying changes.

Amendments to §801.351 are proposed to allow the complainant and others present at the request of the complainant, members of the board, the licensee or applicant, the licensee or applicant's attorney, and board staff to remain for all portions of an informal conference, except during consultation between the board members, staff and the board's legal counsel and at the discretion of the board, to allow witnesses other than the complainant to be present only during their testimony.

FISCAL NOTE

Charles Horton, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the State as a result of enforcing or administering the sections as proposed. The effect on state government will be a decrease in revenue to the state of $7,588 the first fiscal year and $7,588 each year for fiscal years two through five due to the reduction by statute of late license renewal fees. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Horton has also determined that there will be no effect on small businesses, micro-businesses, or other persons required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices to comply with the rules. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT

There is no anticipated economic effect on small businesses as a result of the sections as proposed.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of marriage and family therapy in Texas, all of which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Charles Horton, Executive Director, Texas State Board of Social Worker Examiners, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by e-mail to charles.horton@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by [~~the American Council on Education (ACE),~~] the Council for Higher Education Accreditation (CHEA)[~~, the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE),~~] or the California Bureau for Private Postsecondary and Vocational Education.

(2) - (10) (No change.)

(11) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different marriage and family therapy regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(12) [~~(11)~~] Family systems--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(13) [~~(12)~~] Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(14) [~~(13)~~] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(15) [~~(14)~~] Individual supervision--Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(16) [~~(15)~~] Investigator--A professional complaint investigator employed by the [~~Texas~~] Department of State Health Services.

(17) [~~(16)~~] License--A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(18) [~~(17)~~] Licensed marriage and family therapist--An individual who offers to provide marriage and family therapy for compensation.

(19) [~~(18)~~] Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(20) [~~(19)~~] Licensed marriage and family therapist associate--An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(21) [~~(20)~~] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(22) [~~(21)~~] Month--A calendar month.

(23) [~~(22)~~] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(24) [~~(23)~~] Person--An individual, corporation, partnership, or other legal entity.

(25) [~~(24)~~] Pleading--Any written allegation filed by a party concerning its claim or position.

(26) [~~(25)~~] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2, subsection (g)(5)(i), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(27) [~~(26)~~] Supervision--The guidance or management in the provision of clinical services.

(28) [~~(27)~~] Supervisor--A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise an associate and/or marriage and family therapist.

(29) [~~(28)~~] Texas Open Meetings Act--Government Code, Chapter 551.

(30) [~~(29)~~] Texas Public Information Act--Government Code, Chapter 552.

(31) [~~(30)~~] Therapist--For the purposes of this chapter, a Texas licensed marriage and family therapist or a Texas licensed marriage and family therapist associate.

(32) [~~(31)~~] Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800255
Waymon Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. THE BOARD

22 TAC §801.17, §801.18

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint

filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.17. License Certificate.

(a) The board shall prepare and provide to each Licensed Marriage and Family Therapist and Licensed Marriage and Family Therapist Associate [~~therapist~~] a license certificate and a renewal card which contains the licensee's name and license number.

(b) (No change.)

§801.18. Fees.

(a) (No change.)

(b) The schedule of fees shall be as follows:

(1) - (4) (No change.)

(5) late renewal fee--late renewal fees shall be set as follows:

(A) on or within [~~before~~] 90 days--biennial renewal fee plus one-fourth of the current biennial renewal fee ($33) [~~one-half of the current contracted examination fee~~]; and

(B) longer than 90 days but less than one year--biennial renewal fee plus one-half of the current biennial renewal fee ($65) [~~fee equal to the current contracted examination fee~~];

(6) - (12) (No change.)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800256
Waymon Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.41 - 801.54

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.41. Purpose.

The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee [~~therapist~~].

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate [~~marriage and family therapist~~]:

(1) - (17) (No change.)

(18) consultation which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations; [~~and~~]

(19) parent coordination and parent coordination training under the Texas Family Code, Chapter 153, Subchapter J, pertaining to parenting plan and parent coordinator;

(20) parent education and parent training including advice, counseling, or instructions to parents or children;

(21) life coaching; and any related techniques or modalities; and

(22) [~~(19)~~] any other related services provided by a licensee.

§801.43. Professional Representation.

(a) When providing professional therapeutic services, as defined in §801.42 of this title (relating to Professional Therapeutic Services), a licensee shall indicate his or her licensure status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board.

(b) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or misleading claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or

(3) the practice of marriage and family therapy.

[~~(a) A therapist shall not misrepresent any professional qualifications or associations.~~]

(c) [~~(b)~~] A licensee [~~therapist~~] shall not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

[~~(c) A therapist shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the efficacy of any services.~~]

(d) A licensee [~~therapist~~] shall not encourage, or within the licensee's [~~therapist's~~] power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee [~~therapist~~].

(e) A licensee shall make reasonable efforts to prevent others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee shall take immediate and reasonable action to correct the statement.

§801.44. Relationships with Clients.

(a) A licensee shall provide marriage and family therapy professional services only in the context of a professional relationship.

(b) [~~(a)~~] A licensee [~~therapist~~] shall make known to a prospective client the important aspects of the professional relationship, including but not limited, to the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court.

(d) A licensee shall make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) [~~(b)~~] No commission or rebate or any other form of remuneration [~~renumeration~~] shall be given or received by a licensee [~~therapist~~] for the referral of clients for professional services.

(f) [~~(c)~~] A licensee [~~therapist~~] shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(g) [~~(d)~~] A licensee [~~therapist~~] shall not engage in activities that seek to meet the licensee's [~~therapist's~~] personal needs instead of the needs of the client.

(h) [~~(e)~~] A licensee [~~Under normal circumstances a therapist~~] shall not provide marriage and family therapy services to [~~be involved in the therapy of~~] family members, personal [~~intimate~~] friends, educational [~~close~~] associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) [~~(f)~~] A licensee shall set and maintain [~~therapist shall be responsible for setting and maintaining~~] professional boundaries. Dual relationships with clients shall be avoided. A dual relationship is considered any non-therapeutic activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a dual relationship arises.

(j) [~~(g)~~] A licensee [~~therapist~~] may disclose confidential information to medical or law enforcement personnel if the licensee [~~therapist~~] determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) [~~(h)~~] In group therapy settings, the licensee [~~therapist~~] shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) [~~(i)~~] A licensee [~~therapist~~] shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of five years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(m) [~~(j)~~] A licensee [~~therapist~~] shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(n) [~~(k)~~] A licensee [~~therapist~~] shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(o) [~~(l)~~] A licensee [~~therapist~~] who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

(p) A licensee may not borrow from or lend money or items of value to clients or relatives of clients.

(q) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(r) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(s) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(t) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

§801.45. Sexual Misconduct.

(a) - (b) (No change.)

(c) A licensee [~~therapist~~] shall not provide therapeutic services to a person with whom the licensee [~~therapist~~] has had a sexual relationship.

(d) (No change.)

(e) Because sexual contact with former clients are so frequently harmful to the client, and because such contacts undermine public confidence in the marriage and family therapy profession and thereby deter the public's use of needed services, marriage and family therapists do not engage in sexual contact with former clients even after a two-year [~~two year~~] interval except in the most unusual circumstances. A licensee [~~The marriage and family therapists~~] who engages in such activity after the two years following cessation or termination of therapy bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(1) - (6) (No change.)

(7) any statements or actions made by the licensee [therapist] during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.

(f) (No change.)

(g) The following, when done in the context of professional services, shall be considered to be [Examples of] sexual exploitation [are]:

(1) - (8) (No change.)

(9) making a request for non-professional social contact [to date];

(10) (No change.)

(11) any intentional [bodily] exposure of genitals, anus, or breasts;

(12) - (13) (No change.)

(h) Examples of sexual contact shall include those activities and behaviors described in Texas Penal Code, §21.01. [are:]

[(1) genital and genital contact;]

[(2) genital and anal contact;]

[(3) genital and oral contact;]

[(4) genital and any object contact;]

[(5) anal and any object contact;]

[(6) touching breasts;]

[(7) touching genitals;]

[(8) touching anus; and]

[(9) touching buttocks.]

[(i) A licensee shall report sexual misconduct as follows.]

[(1) If a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider during therapy or any other course of treatment, the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:]

[(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;]

[(B) the board if the misconduct involves a licensee; and]

[(C) any other state licensing agency which licenses the mental health services provider.]

[(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.]

[(3) A report under this subsection need contain only the information needed to:]

[(A) identify the reporter;]

[(B) identify the alleged victim, unless the alleged victim has requested anonymity;]

[(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and]

[(D) provide the name of the alleged perpetrator.]

§801.46. Testing.

(a) A licensee [therapist] shall make known to clients the purposes and explicit use to be made of any testing done as a part of a professional relationship.

(b) A licensee [therapist] shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A licensee [therapist] shall not administer any test without the appropriate training and experience to administer the test.

(d) A licensee [therapist] must observe the necessary precautions to maintain the security of any test administered by the licensee [therapist] or under the licensee's [therapist's] supervision.

§801.47. Drug and Alcohol Use.

A licensee shall not: [A therapist shall not abuse alcohol or drugs, use illegal drugs of any kind, or promote or encourage the illegal use or possession of alcohol or drugs.]

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide treatment intervention services;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

§801.48. Record Keeping, Confidentiality and Release of Records, and Required Reporting. [Confidentiality and Release of Records.]

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611, or other state or federal statutes or rules.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee shall report information if required by any of the following statutes.

(1) Texas Family Code, Chapter 2614, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(5) A licensee shall comply with Occupations Code, Chapter 109, relating to the release and exchange of information concerning the treatment of a sex offender.

(e) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 for a minor.

[(a) A therapist shall follow the rules of confidentiality and the provisions regarding the release of mental health records set forth in the Health and Safety Code, Chapter 611, and other applicable laws related to mental health records.]

(f) [(b)] A licensee [therapist] shall retain and dispose of client records in such a way that confidentiality is maintained.

(g) In independent practice, establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

(h) A licensee shall report sexual misconduct as follows.

(1) In addition to the requirements under subsection (d) of this section, if a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee shall report alleged misconduct not later than the seventh day after the date the licensee became aware of the misconduct or the allegations to:

(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

§801.49. Licensees [Therapists] and the Board.

(a) Any person licensed by the board [as a therapist] is bound by the provisions of the Act and this chapter.

(b) A licensee [therapist] shall report alleged misrepresentations or violations of this chapter to the board [board's executive director].

(c) The licensee shall report name changes, any changes in home or business, address or phone number [changes], employment setting, or other relevant changes[, etc.] to the board in writing and signed within 30 days of the change.

(d) (No change.)

[(e) The board may ask any applicant for licensure whose file contains negative references of substance to come before the board for an interview before the licensure process may proceed.]

(e) [(f)] The [board may consider the] failure of a licensee [therapist] to timely respond to a request from the board or staff [executive director] for information or other correspondence is [as] unprofessional conduct and grounds for disciplinary proceedings [in accordance with Subchapter L of this chapter (relating to Complaints and Violations)].

(f) A licensee shall provide documentation to the board within 30 days of the granting of an academic degree relevant to the practice of marriage and family therapy.

§801.50. Assumed Names.

(a) An individual practice by a licensee [therapist] may be incorporated in accordance with Texas Business Organizations Code, Chapter 301 (relating to Provisions Relating to Professional Entities) or other applicable law.

(b) When an assumed name is used in any practice of therapy, the name of the licensee [therapist] must be listed in conjunction with the assumed name. An assumed name used by a licensee [therapist] must not be false, deceptive, or misleading.

§801.51. Consumer Complaint Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of directing complaints to the board [reporting violations of the Act or this chapter as follows]:

(1) on each registration form, application, or written contract for services;

(2) on a sign prominently displayed in the [primary] place of business; or

(3) in [on] a bill for therapy services provided to a client or third party.

(b) - (c) (No change.)

§801.52. Display of License Certificate.

(a) A licensee [therapist] shall display the license certificate and annual renewal card, issued by the board, in a prominent place in the primary location of practice.

(b) A licensee [therapist] shall display only an original of the license certificate or annual renewal card issued by the board.

(c) A licensee [therapist] shall not make any alteration on a license certificate or annual renewal card issued by the board.

(d) A licensee [therapist] shall not display a license certificate or renewal card issued by the board that has been reproduced or is expired, suspended, or revoked.

§801.53. Advertising and Announcements.

(a) Information used by a licensee [therapist] in any advertisement or announcement of services shall not contain information which is false, misleading, deceptive, inaccurate, incomplete, [or] out of context, or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program

by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee [~~therapist~~] may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) [~~(b)~~] The board imposes no restrictions on advertising by a licensee [~~therapist~~] with regard to the use of any medium, the licensee's [~~therapist's~~] personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee [~~therapist~~], or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) [~~(c)~~] All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the board shall clearly state the licensee's [~~therapist's~~] licensure status by the use of a title such as "Licensed Therapist", or "Licensed Marriage and Family Therapist", or "L.M.F.T.", "Licensed Marriage and Family Therapist Associate" or "LMFT-A", or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists."[~~.~~]

(e) [~~(d)~~] A licensee [~~therapist~~] shall not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee [~~therapist~~].

(f) An LMFT or LMFTA holding a provisional license shall indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist or Provisional Licensed Marriage and Family Therapist Associate", as appropriate.

§801.54. Research and Publications.

(a) In research with a human subject, a licensee [~~therapist~~] is responsible for the subject's welfare throughout a project and shall take reasonable precautions so that the subject shall suffer no injurious emotional, physical, or social effect.

(b) A licensee [~~therapist~~] shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a licensee [~~therapist~~] must give recognition to previous work on the topic as well as observe all the copyright laws.

(d) A licensee [~~therapist~~] must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the licensee's [~~therapist's~~] research or publication.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Waymon Hinson, Ph.D.
Chair
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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §801.72

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.72. General.

(a) - (b) (No change.)

(c) An application [~~Applications~~] must be complete within one year of the original date of filing . An application that is not completed one year past the date an application is opened is voided. [~~or the application may be voided.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §801.92

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.92. Finding of Non-Fitness for Licensure.

The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license [~~an associate license or a regular license of the applicant~~]:

(1) - (2) (No change.)

(3) the violation of any provision of the Act or this chapter in effect at the time of application which is applicable to an unlicensed person; [~~or~~]

(4) the violation of any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation; or [~~.~~]

(5) criminal conviction per §801.332 of this title (relating to Criminal Conviction).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.112 - 801.115

STATUTORY AUTHORITY

The amendments and new section are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments and new section affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.112. General.

(a) The board shall accept as meeting academic requirements for licensure as a marriage and family therapist associate the following: [~~licensure requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.~~]

(1) a master's degree or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree or doctorate degree in marriage and family therapy from an accredited institution or program as defined in §801.2 of this title (relating to Definitions), but the program is not ac-

credited by COAMFTE, provided that the practicum is at least 9 credit hours or 12 months. If the practicum is not at least 9 credit hours or 12 months an applicant may be approved to take the licensing examination and may be issued an associate license upon successfully passing the examination. Prior to receiving a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions); or

(3) a master's or doctorate degree from an accredited institution or program as defined in §801.2 of this title in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with minimum course content as described in §801.114 of this title (relating to Academic Course Content).

(b) Degrees and coursework received at foreign universities shall be acceptable only if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. [~~such coursework may be counted as transfer credit by accredited institutions.~~] It is the applicant's responsibility to have degrees and coursework so evaluated [~~by a professional transcript evaluation service approved by the board~~].

(c) - (g) (No change.)

§801.113. Academic Requirements.

(a) - (c) (No change.)

(d) A degree or course work in a related mental health field must have been a planned course of study designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

(e) Examples of degrees in a related mental health field may include but are not limited to counseling, psychology, social work, or family studies with an emphasis on Marriage and Family Therapy. Degrees in fields other than those listed may be reviewed by an appropriate committee of the board for eligibility toward course equivalency.

§801.114. Academic Course Content.

An applicant who holds a graduate degree in a mental health related field must have course work in each of the following areas (one course equals three semester hours):

(1) - (6) (No change.)

(7) supervised clinical practicum--12 months or [~~/~~] nine hours.

§801.115. Academic Requirements and Supervised Clinical Practicum Equivalency for Applicants Currently Licensed in Another Jurisdiction.

An applicant who is currently licensed as a marriage and family therapist in another jurisdiction of the United States who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following.

(1) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the academic requirements (including the practicum) will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether academic requirements have been met.

(2) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for less than 5 consecutive years, the applicant may make up any deficit in the practicum requirement by receiving 1 month of credit toward the requirement for every 2 months of independent licensed marriage and family therapy experience.

(3) If an applicant is licensed as a marriage and family therapist associate in another United States jurisdiction or has been licensed as a marriage and family therapist for less than 5 consecutive years, the applicant must meet all academic course requirements, including the practicum. The applicant may make up any deficit in the practicum requirement by applying post-graduate supervised experience accrued toward licensure as a licensed marriage and family therapist in another jurisdiction on a month for month equivalency by endorsement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §801.142, §801.143

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.142. Supervised Clinical Experience Requirements and Conditions.

The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Family Therapist Associate (with the exception noted in subparagraph (A)(ii)(III) of this paragraph).

(A) [~~(a)~~] The applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(i) [~~(1)~~] includes at least 3,000 hours of clinical services to individuals, couples or families, of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc; and

(ii) [~~(2)~~] the applicant must be supervised in a manner acceptable to the board, including:

(I) [~~(A)~~] at least 200 hours of supervision;

(II) [~~(B)~~] of the 200 hours, at least 100 hours must be individual supervision;

(III) [~~(C)~~] of the 200 hours, no more than 100 hours may be transferred from the graduate program;

(IV) [~~(D)~~] at least 50 hours of the post-graduate supervision must be individual supervision.

(B) [~~(b)~~] An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(C) [~~(c)~~] During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(D) [~~(d)~~] During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.

(E) [~~(e)~~] Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision.

(F) [~~(f)~~] Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(G) [~~(g)~~] Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(H) [~~(h)~~] The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes. Up to 50 hours of the 200 hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.

(I) [~~(i)~~] An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(J) [~~(j)~~] The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(ii)(III) of this section).

(A) It is the applicant's responsibility to ensure that supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the supervised clinical experience requirements will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether clinical experience requirements have been met.

§801.143. Supervisor Requirements.

(a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting an application which includes the following four documents [~~documentation and verification of the following~~]:

(1) a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, or clinical social work, from an accredited institution as defined in §801.2 of this title (relating to Definitions);

(2) [~~(1)~~] a license (which is not a provisional or an associate license) issued by the board or a license as a marriage and family therapist in another state or territory;

[~~(2) a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from an accredited institution as defined in §801.2 of this title (relating to Definitions);~~]

(3) one of the following:

(A) successful completion of a one-semester graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40 hour continuing education course in clinical supervision offered by a board approved provider; and

(4) at least 3,000 hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.

(b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American Association for [~~of~~] Marriage and Family Therapy (AAMFT) before the person provides any supervision.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. EXAMINATIONS

22 TAC §801.174

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.174. Licensure and Jurisprudence Examinations.

(a) The board shall accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the state of California marriage and family therapy licensure examination [~~licensure examination shall be a written examination prescribed by the board which has been validated by an independent testing professional~~].

(b) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. LICENSING

22 TAC §801.201

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.201. General Licensing.

(a) (No change.)

(b) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the licensee [~~therapist~~] and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the licensee's [~~therapist's~~] original license or be accompanied by the damaged certificate.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §§801.232, 801.235, 801.236

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to

set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.232. General.

(a) A licensee [~~therapist~~] must renew licensure biennially.

(b) Each licensee [~~therapist~~] is responsible for renewing licensure and paying the renewal fee before the expiration date and shall not be excused from paying late renewal fees or renewal penalty fees.

(c) A licensee [~~therapist~~] must have fulfilled continuing education requirements prescribed by the board rule in order to renew licensure.

(d) A licensee [~~therapist~~] whose license is not renewed due to failure to meet all requirements for licensure renewal shall return his or her license certificate to the board and shall not advertise or represent himself or herself as a licensed marriage and family therapist in any manner.

(e) - (f) (No change.)

§801.235. Late Renewal.

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-fourth of the current biennial license renewal fee [~~one-half the examination fee~~]. If a person's license has been expired for 90 days but less than one year the person may renew the license by paying to the board the renewal fee and a fee that is equal to one-fourth of the current biennial license renewal fee [~~the examination fee for licensure~~].

(b) A person whose license was not renewed within one year of the expiration date may seek to obtain a new license by reapplying for licensure, submitting to examination, and complying with current requirements and procedures for obtaining an original license.

(c) (No change.)

§801.236. Inactive Status.

(a) - (f) (No change.)

(g) A licensee [~~therapist~~] may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval and payment of a license fee.

(h) Upon return to active status, the licensee [~~therapist~~] must begin accruing continuing education hours in order to fulfill the continuing education requirements prior to the next licensure renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.261 - 801.264, 801.266

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.261. Purpose.

The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a licensee [~~therapist~~] must complete annually. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public; and keep the licensee knowledgeable [~~maintain and improve the therapist's knowledge~~] of current research, techniques, and practice; and provide other resources which will improve skill and competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

§801.262. Deadlines.

Continuing education requirements for renewal shall be fulfilled during two-year periods beginning on the first day of a licensee's [~~therapist's~~] renewal period and ending on the last day of the licensee's [~~therapist's~~] renewal period.

§801.263. Requirements for Continuing Education.

A Licensed Marriage and Family Therapist [~~licensee~~] must complete 30 clock hours of continuing education acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines). A Licensed Marriage and Family Therapist Associate must complete 15 clock hours of continuing education acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines). All licensees are required to complete 6 [~~Six~~] hours of ethics [~~are required~~] each renewal period. A board-approved supervisor must complete at least 3 [~~three~~] hours of clinical supervision education each renewal period.

§801.264. Types of Acceptable Continuing Education.

Continuing education undertaken by a licensee [~~therapist~~] shall be acceptable to the board as credit hours if it is offered by an approved sponsor(s) in the following categories:

(1) participation in state and national conferences such as the American Association for [~~of~~] Marriage and Family Therapists (AAMFT) and Texas Association for [~~of~~] Marriage and Family Therapy [~~Therapists~~] (TAMFT).

(2) - (6) (No change.)

§801.266. Criteria for Approval of Continuing Education Activities.

Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria.

(1) - (3) (No change.)

[~~(4) Credit may be earned for participation in clinical supervision as a marriage and family therapy associate not to exceed one-half of the biennial requirement.~~]

(4) [~~(5)~~] A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the biennial continuing education requirement.

(5) [~~(6)~~] An author of a book or peer reviewed article which enhances a marriage and family licensee's [~~therapist's~~] knowledge or skill may be granted continuing education credit not to exceed one-half of the biennial continuing education requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291, 801.294, 801.296, 801.297, 801.301, 801.303

STATUTORY AUTHORITY

The amendments and new rule are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendments and new rule affect Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.291. General.

The purpose of this subchapter is to establish procedures for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) - (2) (No change.)

(3) If a suspension overlaps a license renewal date, the suspended marriage and family licensee [~~therapist~~] shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (2) of this subsection.

(4) (No change.)

§801.294. Violations by an Unlicensed Person.

(a) A person commits an offense if the person knowingly or intentionally acts as a licensed marriage and family therapist without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional services but does not act as a licensed marriage and family therapist is not in violation of the Act.

(c) (No change.)

§801.296. Complaint Procedures.

(a) A person wishing to report a complaint or allege a violation of the Act or this chapter by a licensee or other person may [~~shall~~] notify the department staff [~~executive director~~]. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office. A complaint shall not be accepted by the board office if the official complaint form is not filed within 5 years of the date of termination of the licensee-client relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §801.45 of this title (relating to Sexual Misconduct) or the any of the board's other rules relating to sexual misconduct. The board may waive this time limit in cases of egregious acts or continuing threats to public health or safety when presented with evidence that warrants such action.

(b) Upon learning [~~receipt~~] of a complaint, the department staff [~~executive director or executive director's designee~~] may assist the person to obtain an official complaint form from the board's web site or offer to send to the complainant an official form which the complainant should complete and return to the board office. The executive director may refer an anonymous complaint for an investigation, if it appears that enough information has been provided regarding the alleged violation to conduct an investigation.

(c) Upon receipt of a written complaint, the department staff shall send an acknowledgment letter to the complainant. The [~~the~~] executive director or executive director's designee shall determine whether the complaint appears to be within the jurisdiction of the board. If the complaint does not appear to be within the jurisdiction of the board, the complaint will not be referred for an investigation, and

will be referred to the board for review for jurisdiction. If the complaint does appear to be within the jurisdiction of the board, the executive director shall refer the complaint for an investigation and determine whether to notify the alleged violator of the complaint by mail within 45 days and request that the alleged violator submit a written response regarding the complaint within 15 [~~ten~~] days of receipt of the notice. The board may consider failure to respond to a request for a response to a complaint or failure to respond to a request for information to be evidence of failure to cooperate in an investigation. If the executive director determines that the respondent to the complaint should not be notified within 45 days by mail, an investigator of the department shall notify the respondent of the complaint by letter, by telephone, or in person.

(d) Department investigative staff [~~The executive director or executive director's designee~~] shall collect all information related to the complaint. Department investigative staff shall prepare an investigative report or summary. The chair shall appoint an ethics committee, which shall include at least one public board member, to review the complaint and the supporting documentation. The ethics committee shall be appointed to work with the executive director to:

(1) review each complaint and determine what action to take, if any;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) dismiss complaint cases on which no formal action will be taken or recommend formal action to be taken and participate in subsequent due processes afforded to the respondent under the Act or this chapter.

(e) Department staff [~~The executive director or executive director's designee~~] shall keep an information file about each complaint which will include the following:

(1) - (4) (No change.)

(f) Department staff [~~The executive director or executive director's designee~~] shall periodically notify the parties to the complaint of status of the complaint until the complaint is resolved.

(g) The ethics committee, executive director, or executive director's designee may request further investigation of the complaint. [~~After investigation has been completed, the person completing the investigation shall submit his or her findings to the ethics committee, executive director, or executive director's designee. The written investigative report shall set out all facts obtained during the investigation.~~]

(h) After an investigation has been completed, the person completing the investigation shall submit the findings to the ethics committee, executive director, or executive director's designee. The written investigative report shall set out all facts obtained during the investigation. If the ethics committee determines that there are insufficient grounds to support the finding of a violation or act upon the complaint, the ethics committee may dismiss the complaint with a finding of no violation. Department staff [~~and the executive director or executive director's designee~~] shall give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the ethics committee determines that there are sufficient grounds to support the finding of one or more violations [~~complaint~~], the ethics committee will consider the relevant factors identified in §801.301 of this title and the severity level and sanction guide in §801.302 of this title and determine what recommended action to take against the respondent to the complaint, if any. The Ethics Committee will report to the board any proposed disciplinary actions to be taken against a [~~the~~] licensee. If the respondent is not a licensee of the board or a person whose expired license is no longer renewable and is found to have violated the Occupations Code, Chapter 502, the board may issue an order to cease and desist and may refer the case to the Office of Attorney General for appropriate action.

(j) If the committee determines that a violation exists and that the circumstances surrounding the violation did not involve [~~is not~~] a serious risk of or did not result in significantly [~~complaint~~] affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as an advisory notice or warning letter. The committee may also issue an advisory notice or a warning letter if the complaint did not result in a violation, but the circumstances surrounding the complaint are of concern of the board.

(k) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the Ethics Committee for authorization for an emergency suspension of the license.

(l) Ethics Committee meetings and policy are as follows:

(1) The Ethics Committee will meet on a regular basis to review and recommend action on complaints filed against licensees. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent.

(2) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number. At the discretion of the executive director or the ethics committee members, a recording may be made of the ethics committee meeting, with the exception that an executive session may not be recorded.

(3) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. committee members, staff, consultants and licensees against whom the complaint is filed and the person filing the complaint may participate in the discussion of a complaint pending action before the committee. The committee chair or committee by vote may impose time limitations on discussion.

(4) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases that are recommended for closure may be listed together as a consent agenda item. Any committee member, consultant, or staff person may remove cases from the consent agenda for individual review upon request. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(5) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a licensee has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(6) All parties to a complaint will be notified of the findings and recommendations of the committee. The respondent to a complaint who disagrees with the action of the committee may submit a written

statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§801.297. Monitoring of Licensees.

(a) - (d) (No change.)

(e) The board may, as a condition of initial or continued licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

§801.301. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the ethics committee or administrative law judge. Specific factors are to be considered as set forth herein.

(1) (No change.)

(2) Nature of the Violation. The following factors are identified:

(A) - (B) (No change.)

(C) the degree of [~~moral~~] culpability of the licensee, such as whether the violation was:

(i) - (iii) (No change.)

(D) (No change.)

(3) - (5) (No change.)

§801.303. Other Actions.

The ethics committee may resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The ethics committee or executive director, as appropriate, may also issue informal reminders to licensees regarding compliance with minor licensing matters. The licensee is not entitled to a hearing on the matters set forth in formal advisory letters or informal reminders, but may submit a written response to be included with such letters in the licensing record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

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Waymon Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.332

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.332. Criminal Conviction.

(a) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee [~~therapist~~] or if the crime involves moral turpitude.

(b) In considering whether a criminal conviction directly relates to the occupation of a licensee [~~therapist~~], the board shall consider:

(1) (No change.)

(2) the relationship of the crime to the purposes for requiring a license to be a licensed marriage and family therapist or licensed marriage and family therapist associate. The following felonies and misdemeanors relate to the license of a licensed marriage and family therapist or licensed marriage and family therapist associate [~~therapist~~] because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate [~~therapist~~]:

(A) - (B) (No change.)

(3) - (4) (No change.)

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed marriage and family therapist or licensed marriage and

family therapist associate [~~therapist~~]. In making this determination, the board will apply the criteria outlined in Occupations Code, Chapter 53.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Waymon Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER N. INFORMAL CONFERENCES

22 TAC §801.351

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056.

The amendment affects Occupations Code, Chapter 502; and Government Code, Chapter 2001.

§801.351. Informal Conference.

(a) - (k) (No change.)

(l) At the discretion of the executive director or the ethics committee members, a [~~tape~~] recording may be made of some or all of the informal conference.

(m) [~~The ethics committee members or the executive director shall exclude from the informal conference all persons except witnesses during their testimony.~~] The complainant and others present at the request of the complainant, members of the board, the licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the informal conference, except consultation between the board [~~ethics committee~~] members, staff, and the board's legal counsel. Subject to the discretion of the board, witnesses, other than the complainant, may be allowed in the meeting only during their testimony.

(n) - (y) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

28 TAC §7.401

The Texas Department of Insurance proposes amendments to §7.401, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs) for year-end 2006. Section 7.401 regulates risk-based capital and surplus requirements for property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium companies that do business in other states, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank. These insurers and HMOs are referred to collectively as "carriers" in this proposal. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. Section 7.401(d) adopts by reference the NAIC risk-based capital formulas. The proposed amendments to §7.401(d) are necessary to adopt by reference the 2006 formulas, including the 2006 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2006 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2006 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2006 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies. Copies of the documents proposed for adoption by reference are available for inspection in the Financial Analysis and Examinations Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas. In addition, amendments are proposed to §7.401(b)(1), (2), and (3), and (g)(5). The proposed amendment to §7.401(b)(1) is necessary to delete fraternal benefit societies from subsection

(b)(1) because they are subject to their own separate risk-based capital instructions as provided in proposed §7.401(d)(2). The proposed amendment to delete monoline financial guaranty insurers, monoline mortgage guaranty insurers and title insurers from §7.401(b)(2) is necessary because the Risk Based Capital guidelines specifically exclude these types of insurers. The proposed amendments to §7.401(b)(3) clarify that the health Risk Based Capital rule applies to insurers that file the Annual Statement Health Blank. This is necessary because life companies and property and casualty companies may also be authorized to write health insurance, and if such business constitutes 95 percent or more of their total business then the carriers are required to file the Health Blank. The Risk Based Capital is calculated using data derived from the Annual Blank. The proposed amendment to §7.401(g)(5) clarifies that the calculation of the trend test is in the RBC formula itself, not any other. Amendments are also proposed to §7.401(g)(4)(B) and (C) and (h) to update the Insurance Code references for consistency with the revised Insurance Code enacted by the Texas Legislature.

FISCAL NOTE. Mr. Danny Saenz, Associate Commissioner, Financial Program, has determined that, for each year of the first five years the amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. The proposal will have no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the amendment is in effect, the anticipated public benefit will be that the Department will be able to more efficiently and effectively utilize existing resources in the review of the financial condition of carriers, to more efficiently monitor solvency of the carriers subject to the proposal, and to implement the most current risk-based capital requirements. The amendment will enable the Department to administer appropriate and proactive regulatory actions to protect the interests of the public against carriers whose financial condition may potentially be hazardous. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

The Department has determined that the proposed amendments contain three separate sets of requirements that must be analyzed in order to determine costs to carriers required to comply with the proposal. First, §7.401(b), (d) and (e) require certain property and casualty insurers, certain life insurance companies, fraternal benefit societies, stipulated premium companies that do business in other states, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank (the term carriers refers to all of these entities), regardless of size, to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Although not required by the Government Code §2006.002(c), certain insurers are not subject to §7.401, and because of the types or methods of operation of these insurers, they are more likely to be small or micro business carriers. These carriers have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare. Specifically, §7.401(b)(1) provides that §7.401 does not apply to any insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, the scope indicated in §7.401(b)(1) does not include a stipulated premium company only doing business in Texas and certain other carriers regulated by the Department, such as a statewide mutual assessment association, a local mutual aid association, a mutual burial association, or an exempt association. Second, certain carriers that have business subject to §7.402(d)(1) are also required to perform risk-based capital calculations pursuant to the 2006 life risk-based capital C-3 Phase II instructions; this requirement relates to certain unique types of business that the Department believes is written only by large carriers. Third, carriers specified in §7.401(b) that fail to maintain capital and surplus in accordance with the specified levels in §7.401(g)(1), (2), (5) and (6) are required under §7.401(g)(1), (2), (5) and (6) to prepare and implement a comprehensive financial plan, regardless of the size of the carrier.

§7.401(b), (d) and (e). Any carrier specified in §7.401(b) is required to comply with the requirements in §7.401(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These costs will vary from carrier to carrier based on the size and type of the carrier, the character of its investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. Under the amendment, each carrier subject to §7.401(b), (d) and (e), regardless of size, is required to acquire NAIC risk-based capital software at a cost of approximately $650 per entity for each carrier. The labor cost to transfer the information from a carrier's records to the applicable report will vary depending on the size of the carrier and the character of its investments; the transfer by larger carriers and carriers with more complex investments will generally take longer. If a carrier uses the annual statement software that conforms to NAIC specifications provided by authorized vendors to prepare its annual report, and if that software is linked to the risk-based capital formula software, the Department estimates that the information can be transferred and the formula completed in four hours or less. If the annual statement software is not linked to the risk-based capital formula, the Department estimates that a carrier will be able to transfer the information from its records to the risk-based formula in 8 to 16 hours. The Department's estimations are based upon discussions with industry representatives who are responsible for maintaining accounting records for carriers. It is anticipated that a carrier, regardless of size, will utilize an employee who is familiar with the accounting records of the carrier and accounting practices in general, and the Department estimates that the employee is compensated from approximately $20 to $40 an hour. After the completion of the transfer of information, the resulting risk-based capital report will likely be reviewed by an officer of the carrier who is responsible for the preparation of the financial reports of the carrier. The Department estimates that such officers are compensated at a range from approximately $40 per hour to approximately $100 per hour, or more. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range; therefore, based on the Department's experience, the cost of review of the risk-based capital report for small carriers will be less than the cost for large carriers.

The Department does not expect the amended risk-based capital formulas to require a level of capital that is significantly different

from the capital requirements for 2005 in existing §7.401 of this title. Carriers have been required by the Department to comply with the risk-based capital requirements for several years. For those carriers previously subject to the risk-based capital requirements, the Department does not anticipate any material increase in cost resulting from a required capital contribution. However, the function of the risk-based capital formula is to protect policyholders from the effects of insolvency, which may require some carriers to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirements in Insurance Code Chapter 404 and §§441.051, 822.210, 822.211, 841.205, 841.206, 843.404, and 884.206.

§7.401(d)(1). Carriers performing risk-based capital calculations pursuant to the 2006 life risk-based capital C-3 Phase II instructions required in subsection (d)(1) of the amended section will incur costs that vary by the size of the carriers and the amount and complexity of the business subject to these calculations. Less than 10 large domestic carriers and no small or micro business carriers in Texas are expected to have business subject to these calculations. A number of foreign carriers have business subject to these calculations as well. Business subject to these calculations is specified in the 2006 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, and includes primarily variable annuity business, but also business that contains guarantees similar to those found in variable annuity business such as guaranteed minimum death benefits or guaranteed minimum living benefits. The C-3 Phase II calculations measure a more appropriate and potentially less redundant capital requirement for this business, especially when complex guarantees are present. The less than 10 large domestic carriers expected to be affected by the 2006 life risk-based capital C-3 Phase II instructions will incur ongoing annual actuarial and computer personnel costs to perform the C-3 Phase II calculations. The Department estimates that these actuarial personnel costs will range from $25 per hour to approximately $300 per hour. Computer personnel costs are estimated to range from $25 per hour to approximately $150 per hour. The annual costs for each of these few large domestic carriers in Texas are estimated to range from one-half of one percent to one percent of the annual costs of administering each of the carrier's business affected by the C-3 Phase II requirements. The Department anticipates that such annual costs per carrier will be similar for each foreign carrier in Texas with business subject to these requirements. The Department's estimations are based upon discussions with industry representatives familiar with resources and costs needed for these computations. Discussions with industry representatives involved several of the large domestic carriers in Texas estimated to have over half of the domestic carrier variable annuity business in Texas as measured on the basis of accumulation value for this business.

§7.401(g). A few carriers (estimated to be less than one percent of the total carriers doing business in Texas) may need to prepare and file additional reporting with the Department at the company action level, as provided in §7.401(g). The costs of this reporting will vary by company size and complexity but will generally involve an employee who is familiar with the accounting records of the carrier and is compensated at a rate from $20 to $40 per hour. Assistance from actuarial staff may be required, and actuarial personnel costs range from $25 per hour to approximately $300 her hour. The additional reporting requirements typically will involve the chief financial officer or other similar officer responsible for preparing the financial reports; such officers are generally compensated at hourly rates that may range from $40 per hour to approximately $300 per hour. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range. Therefore, based on the Department's experience, the cost of preparation and filing of the additional reporting to the Department at the company action level, are estimated to be relatively less for smaller carriers compared to larger carriers. Company action level reporting and its associated costs are intended to stave off other, higher costs that impacted carriers will likely incur absent their timely action to address the underlying concerns that generated the trend test results. Company action level reporting enables the Department to administer appropriate and proactive regulatory actions in order to protect the interests of the public against carriers whose financial condition may potentially be hazardous.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

The Department has determined that this amendment contains three separate sets of requirements that must be analyzed in order to determine costs to small and micro business carriers required to comply with this amendment. First, amended §7.401(b), (d), and (e) require certain property and casualty insurers, certain life insurance companies, fraternal benefit societies, stipulated premium companies that do business in other states, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank (the term carriers refers to all of these entities), regardless of size, to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Although not required by the Government Code §2006.002(c), certain insurers are already not subject to amended §7.401, and because of the types or methods of operation of these insurers, they are more likely to be small or micro business carriers. These carriers have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare. Specifically, amended §7.401(b)(1) provides that amended §7.401 does not apply to any insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, the scope indicated in amended §7.401(b)(1) does not include a stipulated premium company only doing business in Texas and certain other carriers regulated by the Department, such as a statewide mutual assessment association, a local mutual aid association, a mutual burial association, or an exempt association. Second, amended §7.401(d) and (e) require carriers specified in amended §7.401(b), regardless of size, to maintain capital and surplus in accordance with the specified levels, and the failure to do so triggers the requirement in amended §7.401(g) that the carrier prepare and implement a comprehensive financial plan. Third, certain carriers that have business subject to amended §7.401(d)(1) are required to perform risk-based capital calculations pursuant to the 2006 life risk-based capital C-3 Phase II instructions; the C-3 Phase II requirement relates to certain unique types of business that the Department believes is written only by large carriers and will therefore, not have an adverse economic effect on small or micro businesses.

§7.401(b), (d), and (e). As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in amended §7.401(b)

are small or micro-business carriers that will be required to comply with the requirements in amended §7.401(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These small or micro business carriers will incur routine costs associated with completing the risk-based capital report and reflecting the results in their financial statements filed with the Department. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro-business carriers based upon the carrier's type and size and other factors, including the character of the carrier's investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these routine costs will be less for small or micro business carriers, primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers and because small or micro business carriers may compensate officers who review risk-based capital reports at a lower salary than large business carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this amendment, i.e., completing the risk-based capital report and reflecting the results in the carrier's financial statements filed with the Department, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the amended rule.

§7.401(g). As required by the Government Code §2006.002(c), the Department has determined that the costs to comply with amended §7.401 (g) may have an adverse economic effect on no more than one or two small or micro-business carriers. Such costs will only be incurred by these relatively few small or micro-business carriers because of the failure of the individual carrier to maintain capital and surplus in accordance with the levels required in amended §7.401(g). This failure will trigger the requirement in amended §7.401(g) that the carrier prepare and implement a comprehensive financial plan. This plan will be necessary to identify the conditions that contribute to the carrier's financial condition and must contain proposals to correct areas of substantial regulatory concern and projections of the carrier's financial condition, both with and without the proposed corrections, including plans to restore its capital and surplus to acceptable levels. The total cost of compliance with amended §7.401(g) for preparing and implementing comprehensive financial plans will depend on the size and type of the small or micro-business carrier and other factors, including the character of the carrier's investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. The Department's cost analysis and resulting estimated costs for carriers that will be required to prepare and implement a comprehensive financial plan in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these costs will be less for small or micro-business carriers, primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers and because small or micro business carriers may compensate officers that review risk-based capital reports at a lower salary than large business carriers. Because the function of the risk-based capital formulas in amended §7.401(d) is to protect policyholders, enrollees, and carriers from the effects of carrier insolvency, carriers, regardless of size, that are required to submit comprehensive financial plans may also be required to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.051, 822.210, 822.211, 841.205, 841.206, 843.404, and 884.206. These statutes authorize or require the Commissioner to order carriers that are operating in a potentially hazardous manner to take action to remedy such hazardous condition, which may include the requirement that the carriers increase their capital and surplus and take other remedial action.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though amended §7.401(g) may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The primary purpose of §§404.003 - 404.005, 822.210, 841.205, 843.404, and 884.206 of the Insurance Code, which authorize amended §7.401(g), is to require a carrier to maintain capital and surplus in amounts that exceed the minimum amounts required by statute because of the nature and kind of risks the carrier underwrites or reinsures; the premium volume of risks the carrier underwrites or reinsures; the composition, quality, duration, or liquidity of the carrier's investments; fluctuations in the market value of securities the carrier holds; or the adequacy of the carrier's reserves. These statutes further require that a rule adopted by the Commissioner be designed to ensure the financial solvency of a carrier for the protection of policyholders, enrollees, creditors, or the general public from the harmful effects of carrier insolvency. Section 441.001(g) provides that for the reasons stated by this section, the substance and procedures in Insur-

ance Code Chapter 441 are the public policy of the State of Texas and are necessary to the public welfare. Section 441.001(a) states that insurer delinquencies destroy public confidence in the state's ability to regulate insurers and an insurer delinquency affects other insurers by creating a lack of public confidence in insurance and insurers. Section 441.001(b) states that placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets. Further, the purpose of Insurance Code §§441.051, 822.211, and 841.206 is to prohibit the impairment of a carrier's minimum required capital or surplus, and these statutes require that the Commissioner take action to remedy the impairment. Sections 441.051, 822.211, and 841.206 further provide that the failure of a carrier to maintain its required capital or surplus at levels required by the Commissioner by rule is considered a prohibited impairment.

The purpose of amended §7.401(g) is to protect the economic welfare of (i) carriers, (ii) consumers that purchase insurance policies, annuities and other contracts issued by property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium companies that do business in other states, HMOs, and insurers filing the NAIC Health blank, (iii) other persons and entities that would be adversely affected by a carrier insolvency against the risk that a carrier may become insolvent and unable to pay its insureds' claims and other obligations as they become due, and (iv) the public and the state of Texas generally.

The requirements in amended §7.401(g) that carriers maintain capital and surplus at acceptable levels or prepare a comprehensive financial plan to restore their capital and surplus to acceptable levels are consistent with and necessary to implement the legislative intent of §§404.003 - 404.005, 822.210, 841.205, 843.464, and 884.206 of the Insurance Code. This intent is to ensure the financial solvency of a carrier, regardless of size, for the protection of the economic interests of all policyholders and not just the economic interests of those policyholders insured by large carriers.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of amended §7.401(g) and the authorizing statutes of the Insurance Code, is to protect carrier and consumer economic interests and the state's economic welfare, there are no additional regulatory alternatives to the required comprehensive financial plans and increased capital required as a result of the risk-based capital requirements that will sufficiently protect the economic interests of carriers and consumers and the economic welfare of the state.

§7.401(d)(1). As required by the Government Code §2006.002(c), the Department has determined that amended §7.401(d)(1), relating to the 2006 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula, will not have an adverse economic effect on small or micro businesses. The Department does not anticipate that any small or micro business carriers will have business subject to amended §7.401(d)(1), and therefore no small or micro business will be required to perform risk-based capital calculations pursuant to the 2006 life risk-based capital C-3 Phase II instructions. The amended §7.401(d)(1) requirement relates to certain unique types of business that the Department believes, based upon consultation with industry, is written only by large carriers.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 3, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapters 404 and 441 and §§36.001, 441.051, 541.401, 822.210, 841.205, 843.404, 884.206, 885.401, 982.105, and 982.106. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies and in 441.051 provides, "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" mean and include any one or more of several statutorily specified conditions, including if a company's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Under Section 441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Sections 822.210, 841.205, and 884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 sets out capital stock and surplus requirements for Life, Health, or Accident insurance companies. Section 982.106 sets out capital, stock and surplus requirements for other insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by these proposed amendments: Insurance Code

Chapters 404 and 441 and §§541.401, 822.210, 841.205, 843.404, 885.401, 884.206, 982.105, and 982.106.

§7.401. Risk-Based Capital and Surplus Requirements for Year-End 2006.

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes life insurance, annuity contracts or liability on, or indemnifies any one person for, any risk under a health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of $10,000 including: capital stock companies, mutual life companies, [~~fraternal benefit societies,~~] and stipulated premium companies doing business in other states. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section. This section does not apply to stipulated premium companies only doing business in Texas.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of the Insurance Code §§822.210 and 982.106, excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers, [~~those insurers that are only authorized to write mortgage guaranty insurance in all states in which they are licensed~~] and [~~excluding~~] those insurers that write business only in this state and are not required by law to have capital stock.

(3) Health Maintenance Organizations [~~and insurers required to file the NAIC Health Blank~~]. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and insurers that file the NAIC Health Annual Statement Blank with the department under department filing requirements.

(c) (No change.)

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2006 [~~2005~~] NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2006 [~~2005~~] NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2006 [~~2005~~] NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2006 [~~2005~~] NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies, except fraternals, subject to this section are required to file both a paper copy and an electronic version [~~electronically~~] with the NAIC in accordance with and by the due date specified in the RBC instructions.

(2) (No change.)

(f) (No change.)

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital require the following actions related to an insurer within the specified ranges:

(1) - (3) (No change.)

(4) An insurer reporting total adjusted capital of less than 70% of authorized control level triggers a mandatory control level which subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by the Insurance Code Chapter 404 [~~Article 1.32,~~] and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by the Insurance Code §§404.051 and 404.052 [~~Articles 1.10, §5~~] or 841.206; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) A life insurer subject to this section is subject to a trend test described in the RBC formula, if its total adjusted capital to authorized control level risk-based capital is between 200% and 250%. Any life insurer that trends below 190% of total adjusted capital to authorized control level risk-based capital would trigger the company action level.

(6) A property and casualty insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200% and 300%. If the result of the trend test as determined by the formula is "YES", the insurer triggers regulatory attention at the Company Action Level on the trend test. For the year 2006 [~~2005 only, the first year of this trend test~~], the trend test will be for information purposes only.

(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to any component derived in the calculation, by any insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited. Any violation of this subsection may be considered a violation of Insurance Code Chapter 541 [~~Article 21.21 §(4)(2)~~].

(i) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 15, 2008.

TRD-200800169

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 141. DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE

28 TAC §141.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes the repeal of §141.6, concerning requesting interlocutory orders after the conclusion of a benefits review conference (BRC). The repeal is necessary due to House Bill (HB) 473 and Senate Bill (SB) 1169, enacted by the 80th Legislature (2007), which amend Labor Code §410.032 and renders §141.6 unworkable and outdated. These bills alter the process for requesting and issuing interlocutory orders. HB 473 restores authority to benefit review officers to issue interlocutory orders, gives the opposing party an opportunity to respond, and clarifies that the authority to issue interlocutory orders includes the authority to order the payment or the suspension of benefits, or both. SB 1169 requires the benefit review officer to issue an order no later than the third day after the receipt of a request for the order. These amendments to Labor Code §410.032 facilitate requests for interlocutory orders to be acted on in an expedited manner; thereby providing for the prompt initiation or suspension of benefits during a period of dispute resolution. With the amendments to Labor Code §410.032, §141.6 is outdated since it was promulgated when the interlocutory orders were requested from and issued by central Division staff other than the benefit review officer that presided at the BRC and where deadlines for requesting an interlocutory order existed that are no longer supported by the statute. Labor Code §410.032, as amended, provides detailed guidance on who may issue an interlocutory order, the time for issuing an order, the form for requesting an order (written or oral), an opportunity to respond to a request, and the issues that can be addressed in an order. Any revision of §141.6 would essentially be a restatement of the statutory requirements. As it currently exists, §141.6 is in conflict with the amendments to Labor Code §410.032. The Division has determined that the statutory requirements provide sufficient guidance to participants regarding their responsibilities and that further guidance by rule is unnecessary. For this reason, the Division proposes the repeal of §141.6.

Robert E. Lang, Deputy Commissioner of Hearings, has determined that, for the first five years after the repeal of the section, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or the local economy as result of the proposed repeal.

Mr. Lang has also determined that, for each year of the first five years after the repeal of the section, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to any individuals, or insurers or other Division regulated entities, regardless of size, as a result of the proposed repeal.

In accordance with Government Code §2006.002(c), a Division analysis has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of an unnecessary rule. Therefore, in accordance with Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on March 3, 2008. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html* or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas, 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following section is affected by this proposal: Labor Code §410.032

§141.6. Requesting Interlocutory Orders.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800244
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 804-4715

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TITLE 30. ENVIRONMENTAL

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §§30.3, 30.111, 30.120 and 30.122.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments would create two new license classifications to be consistent with changes made to 30 TAC Chapter 344, Landscape Irrigation, Texas Occupations Code, §1903.251 and the addition of Texas Water Code (TWC), §49.238, and Local Government Code, §401.006, by House Bill (HB) 4, §13, HB 1656 §1, and Senate Bill (SB) 3, §2.34, 80th Legislature, 2007, Regular Session.

HB 4, §13 and §19 and SB 3, §2.34, direct the commission to adopt and enforce rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. As a result of this legislation, in a separate rulemaking, amendments are being proposed to Chapter 344 to enhance the duties of the installer and eventually, eliminate the installer license altogether.

HB 1656, §1, directs municipalities with populations of 20,000 or more to adopt ordinances that require an installer of an irrigation system to be licensed by the commission and obtain a permit before installing an irrigation system. Those municipalities must adopt standards and specifications for designing, installing, and operating irrigation systems and include at a minimum, any rules adopted by the commission related to landscape irrigation. Those municipalities may also employ or contract with a licensed plumbing inspector or licensed irrigation inspector to enforce the ordinance. Additionally, HB 1656 allows water districts to adopt rules that meet the same criteria as municipalities and may employ or contract with a licensed plumbing inspector, a licensed irrigation inspector, the district's operator, or other governmental entity to enforce the rules.

The commission administers the Landscape Irrigators and Installers Licensing Program that currently includes licenses for installers and irrigators. The proposed amendments specify requirements for individuals to obtain and maintain an occupational license to sell, design, install, maintain, alter, repair, or service an irrigation system, provide consulting services relating to an irrigation system, connect an irrigation system to any water supply, or inspect irrigation systems and perform other enforcement duties as an employee or as a contractor of a water purveyor.

TWC, §37.002 requires the commission to adopt any rules necessary to establish occupational licenses and registrations prescribed by Texas Occupations Code, §1903.251. Therefore, to meet the statutory requirements, the agency must create a new irrigation technician and landscape irrigation inspector license classification. The proposed amendments would ensure that the agency's rules are consistent with statutory standards and that the rules are up-to-date and effective. The proposed amendments would also make grammatical and punctuation corrections and incorporate language modifications needed to improve readability and enhance enforceability.

The requirements of HB 1656 became effective September 1, 2007. As required by §19 of HB 4, and SB 3, the commission must adopt standards no later than June 1, 2008, with an effective date of January 1, 2009. The proposed effective date of the amendments to Chapter 30, Subchapters A and D is June 26, 2008.

SECTION BY SECTION DISCUSSION

Subchapter A - Administration of Occupational Licenses and Registrations

The proposed amendments to §30.3, Purpose and Applicability, would add Irrigation Technicians and Irrigation Inspectors as entities regulated by the commission.

Subchapter D - Landscape Irrigators and Installers

The proposed amendments would change the title of Subchapter D to Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors.

The proposed amendments to §30.111, Purpose and Applicability, would add enforcement and inspection duties related to landscape irrigation systems. The proposed amendments would also allow individuals holding an irrigation technician license issued after December 31, 2008, to perform those duties approved for the installer licensees in Chapter 344. Additionally, the proposed amendments would require that those individuals that perform the tasks listed in proposed §30.111(a)(4), meet the qualifications of this chapter, be licensed according to Subchapter A, unless exempt under §30.129, and comply with the requirements of Chapter 344.

The proposed amendments to §30.120, Qualifications for Initial License, would detail the requirements for individuals to obtain an initial installer license prior to January 1, 2009 and for obtaining an initial irrigation technician license after December 31, 2008. Additionally, the proposed amendments would detail the requirements to obtain an initial irrigation inspector license.

The proposed amendments to §30.122, Qualifications for License Renewal, would detail the requirements for individuals to renew an installer license which expires prior to January 1, 2009 and to renew irrigation technician and irrigation inspector licenses.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or local governments as a result of administration or enforcement of the proposed rules. However, the agency's licensing revenue will increase as a result of the establishment of two new licenses for an irrigation inspector and for an irrigation technician. The agency has not been given the appropriation authority to utilize the fee revenue expected to be generated by these two new license programs.

The proposed amendments would create two new license classifications to be consistent with changes required by House Bill 1656, 80th Legislature, 2007, Regular Session. HB 1656, §2 and §3, allows municipalities and water districts to employ or contract with a licensed irrigation inspector or a licensed plumbing inspector to enforce ordinances or rules relating to irrigation systems which they have approved. The agency does not currently have a program to obtain and maintain an occupational license to perform inspections of landscape irrigation systems. To meet

the statutory requirements of HB 1656, the agency must create a new landscape irrigation license classification. In addition, the requirement to have a licensed individual present during the installation, repair, alteration, or service of an irrigation system requires the agency to create a license for irrigation technicians to meet expected statewide demand for the installation of irrigation systems. The proposed amendments would establish the requirements for these two types of licenses. This fiscal note does not address the costs to hire a licensed plumbing inspector since this license program is not administered by the agency.

The agency expects to utilize existing appropriation authority to perform the administrative tasks needed to modify existing databases, mail needed notifications to licensees, and print needed forms and materials. Licensing fees for these new licensing classifications will be collected and deposited into the TCEQ Occupational Licensing Account 0468.

The fee for each license will be $111 for a three-year period. The number of licenses to be issued or renewed and the amount of revenue to be collected and deposited into Account 0468 during the first five years the proposed rules are in effect can be seen in the table below:

Figure: 30 TAC Chapter 30--Preamble

There are approximately 117 municipalities that will be required to adopt and enforce a landscape irrigation ordinance, and there are approximately 1,100 water districts that could choose to do so. The proposed rules will have a fiscal impact on local governments but that impact is not expected to be significant. Any staffing costs, licensing costs, or training costs incurred by municipalities and water districts could be recovered by these entities if they choose to increase permitting fees to cover their inspection costs. Staff estimates that the salary for an irrigation inspector could range from $29,000 to $50,000 per year depending on the requirements of the local government. Local governments would incur license exam fees and training costs for any employee serving as a licensed irrigation inspector. These costs are estimated to be $1,300 per applicant in the first year. A license fee of $111 would also be required in the first year. The license must be renewed every three years, and the employee would be required to earn continuing education credits to qualify for renewal. Training cost for continuing education and the license renewal fee is estimated to range from $450 to $560 every three years. If a local government decides to use a third party to inspect landscape irrigation systems, contract costs are estimated to be equivalent to or lower than the costs of hiring, training, and licensing an employee. It is also expected that any contract costs would be recovered by increasing permit fees.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, increased consumer protection, and the promotion of water conservation through the adoption and enforcement of landscape irrigation ordinances.

Businesses and individuals who choose to perform landscape irrigation installations or inspections for municipalities and water districts are not expected to experience adverse fiscal impacts as a result of the proposed rules. Staffing, licensing, and training costs are expected to be in the same range as those incurred by local governments, and any such costs are expected to be recovered by the fee charged to do such inspections.

Staff does anticipate that some businesses could conduct training classes and administer license exams. Training and testing revenues could vary widely depending on how much the entity would charge to recoup its costs and make a profit. The proposed rules require that applicants for the irrigation inspector license take certain courses. Based on the costs of other licensing programs, staff estimates that businesses could charge as much as $500 for a basic irrigator training course, $500 for a backflow prevention assembly testing course, and $300 for an approved water conservation or water audit course. For an irrigation technician license, only one course, a basic irrigation technician course, estimated to cost $350, is required. Continuing education courses would be in the same price range as the courses taken to obtain an original license. Businesses administering license exams could charge as much as $100 per applicant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that might choose to train or test potential licensees, perform irrigation inspections, or provide irrigation technician services. Small or micro-businesses are expected to cover the costs of training their employees and obtaining the appropriate licenses when they perform irrigation services for their customers.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to implement state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a major environmental rule. Texas Government Code, §2001.0225, defines a major environmental rule as one that is specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The proposed rules are intended to create a licensing program for individuals that perform installer duties and will in the future perform duties of an irrigation technician. An irrigation technician is defined as an individual that, under the direct supervision of a licensed irrigator, installs, maintains, alters, repairs, or services an irrigation system, or connects an irrigation system to any water supply. The proposed rules are also intended to create a licensing program for individuals that will perform irrigation inspector duties. An irrigation inspector is defined as a person who inspects irrigation systems and performs other enforcement duties as an employee or as a contractor of a water purveyor and is required to be licensed under Chapter 30. Training requirements and enforcement for noncompliance for the irrigation technician and irrigation inspector would be addressed in the proposed rules. Protection of human health

and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply add licensing requirements for irrigation technicians and irrigation inspectors and address training requirements and enforcement for noncompliance. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the proposed amended sections are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed amended sections to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. The United States Environmental Protection Agency does not have a federal program for landscape irrigation systems and does not establish requirements for states that implement their own landscape irrigation programs. Second, the rules do not exceed an express requirement of state law but are being adopted to implement state law. Third, there is no delegation agreement that would be exceeded by these rules. Fourth, the commission adopts these rules to allow licensing requirements for irrigation technicians and irrigation inspectors and address training requirements and enforcement for noncompliance in compliance with the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers. These rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

The commission invites public comment on the draft regulatory impact analysis determination.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these proposed rules is to ensure consistency between the rules and their applicable statutes, by creating a licensing program for irrigation inspectors and irrigation technicians. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules would only make non-substantive changes to the existing rules and proposed new regulations that do not affect private real property.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial, administrative, and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on February 26, 2008, at 1:30 p.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building C, Room 131. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-031-030-CE. The comment period closes March 3, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Terry Thompson, Occupational Licensing Section, at (512) 239-6095.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §30.3

STATUTORY AUTHORITY

This amendment is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. This amendment is also proposed under TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Con-

tinuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. This amendment is also proposed under Texas Occupations Code, §1903.053, concerning Standards, Texas Occupations Code, §1903.251, concerning License Required.

This proposed amendment implements TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015 and Texas Occupations Code, §1903.053, and §1903.251.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, [~~and~~] Installers, Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training Providers) contain the program-specific requirements related to each program.

(b) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) backflow prevention assembly testers;

(2) customer service inspectors;

(3) landscape irrigators, [~~and~~] installers, irrigation technicians and irrigation inspectors;

(4) leaking petroleum storage tank corrective action specialists and project managers;

(5) municipal solid waste facility supervisors;

(6) on-site sewage facility installers, designated representatives, apprentices, maintenance providers, and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies;

(10) public water system operators and operations companies; and

(11) visible emissions evaluators training providers.

(c) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No new or renewal installer license applications will be accepted after December 31, 2008. Existing installer licenses or those renewed after the effective date of these rules, but prior to January 1, 2009 will remain valid until December 31, 2009 or their expiration date, whichever occurs first.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800232
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER D. LANDSCAPE IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS AND IRRIGATION INSPECTORS

30 TAC §§30.111, 30.120, 30.122

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also proposed under TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. Additionally, these amendments are also proposed under TWC §49.238, concerning Irrigation Systems. These amendments are also proposed under Local Government Code, §401.006, concerning Irrigation Systems. These amendments are proposed under the Texas Occupations Code, §§1903.001, 1903.002, 1903.053 and 1903.251, concerning Definitions, Exemptions, Standards and License Required.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; 49.238 and Local Government Code, §401.006; Texas Occupations Code, §§1903.001, 1903.002, 1903.053 and 1903.251.

§30.111. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who:

(1) sell, design, install, maintain, alter, repair, or service an irrigation system;

(2) provide consulting services relating to an irrigation system; [~~or~~]

(3) connect an irrigation system to any water supply; or [~~.~~]

(4) inspect irrigation systems and perform other enforcement duties as an employee or as a contractor.

(b) An individual who performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless they are exempt under §30.129 of this title (relating to Exemptions); and must comply with the requirements in Chapter 344 of this title (relating to Landscape Irrigation).

§30.120. Qualifications for Initial License.

(a) To obtain an installer license prior to January 1, 2009, an individual must [~~have~~]:

(1) meet [~~met~~] the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) pass [~~passed~~] the applicable examination.

(b) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No new installer license applications will be accepted after December 31, 2008. New installer licenses issued after the effective date of these rules will remain valid through December 31, 2009. The fee for initial installer licenses issued after the effective date of these rules will be prorated to reflect the validity period.

(c) [~~(b)~~] To obtain an irrigator license, an individual must [~~have~~]:

(1) meet [~~met~~] the requirements in Subchapter A of this chapter

(2) complete [~~completed~~] and pass [~~passed~~] the basic irrigator training course; and

(3) pass [~~passed~~] all sections of the applicable examination.

(d) To obtain an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) complete the basic irrigation technician course; and

(3) pass the applicable examination.

(e) To obtain an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter.

(2) successfully complete:

(A) the basic irrigator training course;

(B) an approved backflow prevention assembly testing training course;

(C) an approved water conservation or water audit course; and

(3) pass the applicable examination.

(f) An individual is ineligible to obtain an irrigation inspector license if the individual engages in or has financial or advisory interest in an entity that:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; or

(3) connects an irrigation system to any water supply.

§30.122. Qualifications for License Renewal.

(a) To renew an installer license that expires prior to January 1, 2009, an individual must meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(b) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No installer license renewal applications will be accepted after December 31, 2008.

(c) Installer licenses renewed after the effective date of these rules, but prior to January 1, 2009, will remain valid until December 31, 2009. The fee for installer licenses renewed after the effective date of these rules will be prorated to reflect the validity period.

(d) [~~(b)~~] To renew an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.

(e) To renew an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 16 hours of approved training credits.

(f) To renew an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800233
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-0177

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§291.3, 291.14, 291.21, 291.41, 291.87, 291.88, 291.101, 291.105, 291.113, and 291.144.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2007, the 80th Legislature passed Senate Bill (SB) 3, House Bill (HB) 149, and HB 3475. Sections 2.05, Certificate of Convenience and Necessity (CCNs); 2.06, Consolidated Billing; 2.07, Rates; 2.08, CCNs; 2.32, Powers and Duties of Utilities; 2.39, CCNs; and 7.01, Rates, of SB 3; HB 149; and, HB 3475 relate to water utilities.

SB 3, §2.05, amended Texas Water Code (TWC), §13.002 (1-a) to alter the definition of "landowner" or "owner of a tract of land" to denote that the owner or multiple owners of a single deeded track of land are as shown on the appraisal roll of the appraisal district established for each county in which the property is located. This section of SB 3 also amended other definitions not addressed in this rulemaking.

SB 3, §2.06 amended TWC, Chapter 13, Subchapter E, by adding §13.147, Consolidated Billing and Collection Contracts, to allow a retail public utility providing water service to contract

with a retail public utility providing sewer service for the billing and collection of the sewer service provider's fees and payments as part of a consolidated process. This service may only be provided by the water provider for customers that are served by both providers in an area covered by both providers' CCNs. If the water provider refuses to enter into a contract with the sewer provider, or if they cannot agree on the terms of the contract, the sewer service provider may petition the commission to issue an order requiring the water provider to provide that service.

SB 3, §2.07, amended TWC, Chapter 13, Subchapter F, by adding §13.188, Adjustment for Change in Energy Costs. This section allows the commission to adopt a procedure which allows a utility to file an application for an adjustment in the utility's rates to reflect an increase or decrease in documented energy costs through the use of a pass through clause. The pass through, whether an increase or a decrease, shall be implemented on no later than an annual basis, unless the commission determines a special circumstance applies.

SB 3, §2.08 and §2.39 amended TWC, Subchapter F, §13.2451, to allow a municipality to extend a CCN to area outside the municipality's extraterritorial jurisdiction (ETJ) so long as the municipality meets the criteria outlined in §13.241 for granting of a CCN. TWC, §13.241(c) was also added to allow the commission, after notice to the municipality and the opportunity for a hearing, to decertify an area outside the municipality's ETJ if the municipality does not provide service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This section does not apply for an area that was transferred to a municipality on approval of the commission or in relation to which the municipality has spent public funds. TWC, §13.241(d), was added to stipulate that, if a conflict between this section and §13.245 arise, then §13.245 prevails. SB 3, §2.39, also amended TWC, Subchapter F, §13.2451, to specify that this section applies only to: (1) an application to obtain or amend a CCN submitted to the TCEQ on or after the effective date of this Act; (2) a proceeding to amend or revoke a CCN initiated on or after the effective date of this Act; (3) a CCN issued to a municipality regardless of the date the certificate was issued; (4) an application filed by a municipality to obtain or amend a CCN, regardless of the date the application was filed; and, (5) a proceeding to amend or revoke a CCN held by a municipality or by a utility owned by a municipality, regardless of the date the proceeding was initiated.

SB 3, §2.32, added Local Government Code, Subchapter Z, §402.911, to require a water service provider that meets specific criteria to provide a municipality or district with relevant customer information so the municipality or district may bill the customer directly for sewer service and verify water consumption. Relevant customer information includes name, address, phone number, monthly meter readings, monthly consumption information, billing adjustments, and specifics about the meter such as brand, model, age, and location. The legislation also requires a municipality or district to reimburse the water provider for its reasonable and actual costs for providing this service to the municipality or district. The municipality or district may also provide a notice to customers delinquent for more than 90 days for sewer service. This notice must include the past due amount, and the deadline by which the past due notice must be paid before water service is disconnected. After such a notice is provided, the municipality or district may notify the water service provider of a customer who fails to make timely payment. On receipt of this notice, the water service provider must discontinue water service to the municipality or district's sewer customer. This section applies to a water provider that is located in a county with a population greater than 1.3 million and in which a customer's sewer service is provided by a municipality or conservation and reclamation district for the same area, except for a nonprofit water supply or sewer service corporation created under TWC, Chapter 67, or a district created under TWC, Chapter 65.

SB 3, §7.01, amended TWC, Chapter 49, Subchapter H, by adding §49.2122, which allows a district to establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate. These factors include the similarity of the type of customer to other customers; the type of service provided; the cost of facilities and operations including additional costs for security, recreational facilities, or fire protection; and/or the total revenue, including ad valorem tax revenues and connection fees received from a particular class of customers.

HB 149 amended TWC, Chapter 13, Subchapter C, by adding §13.046, which requires the commission by rule to provide a streamlined process to allow the retail public utility that takes over the nonfunctioning "retail" water or sewer utility to apply for a ruling on the reasonableness of the newly implemented rates. The bill further requires the commission to establish, in consultation with the utility, a reasonable amount of time for the retail public utility to bring the water or wastewater system into compliance, and prohibits the commission from imposing a penalty during this period for any violation that existed at the time the nonfunctioning system was taken over.

HB 3475 amended Local Government Code, §421.017 and applies to counties adjacent to an international border and in which a military installation and national recreational area are located. This bill affects these specific counties by allowing them to acquire, construct, operate, or maintain a water supply or sewage system to serve the unincorporated areas of the county.

SECTION BY SECTION DISCUSSION

Subchapter A: General Provisions

§291.3, Definition of Terms

The commission proposes to amend the definition of "Landowner" in §291.3(19) to add the phrase "as shown on the appraisal roll of the appraisal district established for each county in which the property is located" to match the language of TWC, §13.002(1-a), as amended by SB 3, in §2.05, 80th Legislative Session, 2007.

The commission proposes to add a definition for "Nonfunctioning system" in §291.3(28). The commission proposes the following definition: A utility under the supervision of a receiver or temporary manager pursuant to §291.142 and §291.143, respectively. The commission proposes this change to provide guidance for interpreting TWC, §13.046, as added by HB 149, 80th Legislative Session, 2007. The subsequent definitions were renumbered to accommodate this proposed new definition.

§291.14, Emergency Orders

The commission proposes to amend §291.14(b)(2) by adding a reference to TWC, §13.046, which requires the commission to establish a streamlined process whereby a retail public utility taking over a nonfunctioning retail water or sewer utility can immediately charge a reasonable rate for the services provided to the nonfunctioning utility's customers. The commission proposes to establish §291.14(b)(2) as the mechanism by which a retail public utility taking over a nonfunctioning retail water or sewer utility can immediately charge a reasonable rate for the services pro-

vided to the nonfunctioning utility's customers. The commission proposes this change to implement TWC, §13.046, as added by HB 149, 80th Legislative Session, 2007.

Subchapter B: Rates, Rate making, and Rates/Tariff Changes

§291.21, Form and Filing of Tariffs

The commission proposes to amend §291.21, to add a reference in §291.21(b)(2)(A)(vi) to allow for minor tariff changes for consolidated billing between a separate retail public water and sewer provider, as defined in §291.3(39), for the same service area under TWC, §13.147, as added by §2.06, SB 3, 80th Legislative Session, 2007. A retail public water and sewer provider is defined in §291.3(39) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation." This proposed amendment is consistent with other minor tariff provisions regarding billing for sewer service.

The commission proposes to add new §291.21(k)(2)(E), which allows a retail public utility to charge a surcharge for interconnection costs, other costs incurred in making services available, and costs that will be incurred to bring the nonfunctioning system into compliance with the commission's rules. The commission proposes this change to implement TWC, §13.046, as added by HB 149, 80th Legislative Session, 2007.

The commission proposes to add new §291.21(k)(4) to allow the executive director to authorize a surcharge by a water or sewer provider to reflect an increase or decrease in documented energy costs without a contested case hearing. This proposed amendment would also require the executive director to hold an uncontested public meeting upon request by a legislator who represents the area served by the water and/or sewer utility or if the executive director determines that there is substantial public interest in the matter. An uncontested public meeting is for the purpose of providing information to the public. The commission proposes this change to implement TWC, §13.188, as amended by §2.07 of SB 3, 80th Legislative Session, 2007.

Suchapter C: Rate-Making Appeals

§291.41, Appeal of Rate-making Pursuant to the Texas Water Code, §13.043

The commission proposes to amend §291.41 to add a phrase in §291.41(i) to clarify that, to the extent of a conflict between this subsection and TWC, §49.2122, TWC, §49.2122, prevails. The commission proposes this change because TWC, §49.2122, as amended by §7.01 of SB 3, 80th Legislative Session, 2007, allows a district to establish different charges, fees, rentals, or deposits among classes of customers based on any factor the district considers appropriate, including the factors listed in TWC, §49.2122(a), unless the district has acted arbitrarily or capriciously.

Subchapter E: Customer Service and Protection

§291.87, Billing

The commission proposes to amend §291.87 to add new §291.87(g) to allow for a consolidated billing process between separate retail public water and sewer providers for the same service area to implement TWC, §13.147, as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add §291.87(g)(1) to clarify that this subsection applies to all retail public utilities. The commission proposes this change to implement TWC, §13.147, as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add §291.87(g)(2) to allow a retail public sewer utility to enter into a contract for consolidated billing, or seek a commission order requiring consolidated billing, from a retail public water utility service for the same service area. The commission proposes this change to implement TWC, §13.147(a), as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add §291.87(g)(3) to require that a contract or order between a retail public water and sewer provider for the same service area under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider. The commission proposes this change to implement TWC, §13.147(b), as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add §291.87(g)(4) to require or allow a retail public water service provider that provides consolidated billing and collection of fees and payments to terminate the water services of a person whose sewage services account is in arrears for nonpayment and charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account. The commission proposes this change to implement TWC, §13.147(c), as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add §291.87(g)(5) to allow a retail public water service provider that provides consolidated billing and collection of fees and payments to impose on each customer of the retail public sewer service provider a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services. The commission proposes this change to implement TWC, §13.147(d), as added by §2.06 of SB 3, 80th Legislative Session, 2007.

The commission has renumbered the subsequent subsections based on the addition of new §291.87(g).

§291.88, Discontinuance of Service

The commission proposes to amend §291.88(e) to outline the duties of a water service provider to an area served by a sewer service provider in a county with a population of more than 1.3 million and in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity, but not including a nonprofit water supply and/or sewer service corporation created under TWC, Chapter 67, or a water district created under TWC, Chapter 65. The commission proposes this change to implement Local Government Code, §402.911, as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(A) to specify which political subdivisions this subsection applies. This section applies only to an area that is located in a county that has a population of more than 1.3 million and in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity. The commission proposes this change to imple-

ment Local Government Code, §402.911(a), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(B) to require the water service provider to provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider; the monthly meter readings of the customer; monthly consumption information, including any billing adjustments; and certain meter information, such as brand, model, age, and location. The commission proposes this change to implement Local Government Code, §402.911(b), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(C) to require the municipality or district to reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. The commission also proposes a definition of incremental costs and proposes the circumstances under which the water service provider must provide the municipality or district with documentation certified by a certified public accountant. The commission proposes this change to implement Local Government Code, §402.911(c), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(D) to allow for written notice to persons to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days and specifies the content and delivery format of the notice. The commission proposes this change to implement Local Government Code, §402.911(d), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(E) to allow for a notification to the water service provider for the failure of timely payment of sewer charges by a person and allow the sewer service provider to request that the water service provider discontinue service to the person. The commission proposes this change to implement Local Government Code, §402.911(e), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

The commission proposes to amend §291.88(e)(3)(F) to clarify that this subsection does not apply to a nonprofit water supply or sewer service corporation created under TWC, Chapter 67, or a district created under TWC, Chapter 65. The commission proposes this change to implement Local Government Code, §402.911(f), as added by §2.32 of SB 3, 80th Legislative Session, 2007.

Subchapter G: Certificates of Convenience and Necessity

§291.101, Certificate Required

The commission proposes to amend §291.101(a) to reflect the legislature's intent to treat affected counties, adjacent to an international border in which a military installation and a national recreation area are located, in the same manner as a municipality. Municipalities are not required to obtain a CCN to provide service to an uncertificated area. The commission proposes this change to implement Local Government Code, §412.017, as amended by HB 3475, 80th Legislative Session, 2007.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission proposes to amend §291.105(c)(1) by deleting the phrase "except as provided by paragraph (2) of this subsection, if." The language in existing paragraph (2) was deleted by the legislative amendments to corresponding language in TWC, §13.2451, by §2.08 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add new §291.105(c)(2), to require a municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction to comply with TWC, §13.241. The commission proposes this change to implement TWC, §13.2451, as amended by §2.08 of SB 3, 80th Legislative Session. Under §2.39(4) of SB 3, 80th Legislative Session, this proposed amendment applies to any application filed by a municipality or by a utility owned by a municipality for a certificate of public convenience and necessity or for an amendment to a certificate, regardless of the date the application was filed.

The commission proposes to delete existing §291.105(c)(2), because the corresponding language in TWC, §13.2451 was deleted from TWC, §13.2451, by §2.08 of SB 3, 80th Legislative Session, 2007.

The commission proposes to add new §291.105(c)(3), to clarify that, if a conflict exists between TWC, §13.245 and this subsection, TWC, §13.245, prevails.

§291.113, Revocation or Amendment of Certificate

The commission proposes to amend §291.113 by adding a new §291.113(a)(5) to provide for the revocation or amendment of an area certificated to a municipality outside the municipality's extraterritorial jurisdiction when the municipality has not provided service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph. The commission proposes this change to implement TWC, §13.2451(c), as added by §2.08 of SB 3, 80th Legislative Session, 2007. Pursuant to §2.39(3) and (5) of SB 3, 80th Legislative Session, 2007, this proposed amendment applies to a proceeding to amend or revoke a certificate of public convenience and necessity held by a municipality or by a municipally owned utility regardless of the date the proceeding was initiated and regardless of the date the certificate was issued.

Subchapter J: Enforcement, Supervision, and Receivership

§291.144, Fines and Penalties

The commission proposes to amend §291.144 to add §291.144(b) which would mandate that the commission not impose a penalty on the retail public utility taking over the nonfunctioning system for a period to be determined in cooperation with the retail public utility. The commission proposes this change to implement TWC, §13.046, as added by HB 149, 80th Legislative Session, 2007. With the addition of new (b), the current implied subsection (a) became subsection (a). The commission also proposes to delete the catchline in the existing implied subsection (a).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule amendments are in effect, no significant fiscal implications

are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement provisions (§§2.05, 2.06, 2.07, 2.08, 2.32, 2.39, and 7.01) of SB 3, HB 149, and HB 3475, 80th Legislature, Regular Session, 2007, regarding certain capabilities of retail public water utilities to provide water and sewer service in the state by amending various sections of Chapter 291.

Provisions and Fiscal Impact of SB 3

The proposed rules would: allow a retail public utility providing sewer service to contract with a separate retail public utility providing water service to establish a consolidated billing process to bill and collect sewer service provider fees; allow the agency to establish a procedure allowing a utility to apply for rate adjustments to reflect increases or decreases in its rates due to documented energy costs passed through to consumers; allow a municipality to extend a CCN to an area outside its ETJ under certain conditions; require water service providers located in a county with a population greater than 1.3 million to provide relevant customer information to municipalities or water districts so that they may bill customers directly for sewer service and verify water consumption; and, allow water districts to establish different charges, fees, rentals, or deposits among classes of customers based on factors the water district considers appropriate. The proposed rules implementing these provisions of SB 3 are not anticipated to have a significant fiscal impact on local governments since the rules are optional or allow an impacted local government to recoup the cost of providing services either to direct customers or other public water utilities. Staff cannot estimate the number of local governments that might choose to implement the various options afforded by the proposed rules to streamline their operations, increase their service areas, or increase rates to recoup the cost of providing water or sewer service.

Provisions and Fiscal Impact of HB 149

The proposed rules amend Chapter 291 to provide a streamlined process allowing a retail public utility taking over a nonfunctioning retail water or sewer utility to apply for a ruling by the agency on the reasonableness of newly implemented rates to recover service costs. The agency would be required to consult with the utility to establish a reasonable timeframe to bring the water or wastewater system into compliance with agency rules. The proposed rules would also prohibit the agency from imposing penalties during this period for violations existing at the time the nonfunctioning system was taken over by the functioning retail public utility. Since the proposed rules would allow a local government to recoup reasonable costs and avoid the payment of penalties for certain violations, no significant fiscal impacts are expected to affect local governments providing retail water and sewer services to an area previously serviced by a nonfunctioning water or sewer utility. Staff cannot estimate the number of local governments that might choose to take over a nonfunctioning retail water or sewer utility in the future; but in the near future, staff expects at least one municipality will take over a nonfunctioning system.

Provisions and Fiscal Impact of HB 3475

The proposed rules amend Chapter 291 to allow particular counties along the border to acquire, construct, operate, or maintain a water supply or sewage system to serve unincorporated areas of the county. The proposed rules are not anticipated to have a significant fiscal impact on the pertinent county governments since they would be allowed to seek financial assistance to construct such systems and allowed to establish water and wastewater rates to recoup service and operation costs. There may be as many as two counties that might choose to provide water and sewer service to their unincorporated areas.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the provision of safe, consistent, reasonably priced water and sewer services to the general public and compliance with state law.

Although some individual consumers may see an increase in the costs of retail water or sewer service, the proposed rules will help ensure that such services remain safely available and interruptions in such services are minimized as much as possible. By allowing retail water and wastewater providers the ability to charge reasonable rates to cover increased costs and thus provide incentives to take over failed water and sewer systems, consumers should experience continued confidence or greater convenience concerning retail public utilities providing safe drinking water and adequate sewer services.

The proposed rules are not anticipated to have a significant fiscal impact for the individuals or large businesses providing retail water or sewer services to the general public. The proposed rules are optional in many cases. Any rate increases are expected to cover costs, and the agency must ensure the costs are reasonable. Staff cannot estimate the number of providers of retail water and/or sewer utility services that might elect to implement the various options afforded by the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that provide retail water and/or sewer services as a result of the proposed rules. The proposed rules are optional in many cases, and any rate increases that providers of retail water and sewer services choose to implement are required to be reasonable. If rates are increased, they are expected to increase to the extent needed to recover higher operating or compliance costs.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedures Act. A "major environmental rule" means a rule the

specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to implement provisions enacted in SB 3, HB 149, and HB 3475, of the 80th Legislature, 2007. Generally, these proposed amendments are intended to impact only the economic regulation of water and sewer providers. More specifically, the provisions amend the definition of a landowner for the purpose of CCN regulation; allow for consolidated billing and collection contracts between retail public water and sewer providers; allow for adjustments to utility rates to account for increases or decreases in documented energy costs; revise the rules relating to obtaining, amending, and decertifying a municipality's CCN for water and sewer service; create new duties of a water service provider to certain political subdivisions that provide sewer service to the same area; allow a district to establish different utility rates among classes of customers; allow a utility that takes over a nonfunctioning utility to charge reasonable temporary rates and give the utility a reasonable period of time to bring the nonfunctioning system into compliance with commission rules before the commission assesses penalties; and allow certain counties to operate a utility in the same manner as a municipality under Local Government Code, Chapter 402. The proposed rules are not intended to have any impact on environmental regulations. Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure, nor will it have an adverse economic effect. Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or, (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because the proposed rules: (1) are specifically required by state law, namely the TWC and Local Government Code, and do not exceed a standard set by federal law; (2) do not exceed the express requirements of the TWC or Local Government Code; (3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and, (4) the proposed rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the proposed rulemaking does not constitute a major environmental rule and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments to Chapter 291 and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The intent of the proposed rules is to implement amendments enacted in SB 3, HB 140, and HB 3475, 80th Legislature, 2007.

The proposed rules would substantially advance the intent of the rulemaking by amending the definition of a landowner for the purpose of CCN regulation, allowing for consolidated billing and collection contracts between retail public water and sewer providers, allowing for adjustments to utility rates to account for increases or decreases in documented energy costs, revising the rules relating to obtaining, amending, and decertifying a municipality's CCN for water and sewer service, creating new duties of a water service provider to certain political subdivisions that provide sewer service to the same area, allowing a district to establish different utility rates among classes of customers, allowing a utility that takes over a nonfunctioning utility to charge reasonable temporary rates and give the utility a reasonable period of time to bring the nonfunctioning system into compliance with commission rules before the commission assesses penalties, and allowing certain counties to operate a utility in the same manner as a municipality under Local Government Code, Chapter 402.

Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed regulations do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this proposed rulemaking does not burden nor restrict or limit the owner's right to property. More specifically, these rules implement CCN regulations, water and sewer utility rate regulations, and other related regulations of water and sewer service providers, none of which imposes any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on February 26, 2008, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present

oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services at (512) 239-6091. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to John Gaete, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-048-291-PR. The comment period closes March 3, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Tammy Holguin-Benter, Water Supply Division, at (512) 239-6136.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §291.3, §291.14

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under TWC and TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. Finally, TWC, §13.046 requires the commission to adopt rules that allow a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system.

The proposed amendments implement TWC, §13.002 and §13.046.

§291.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition adjustment--

(A) The difference between:

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property; and

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.

(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.

(2) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(3) Affected person--Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(5) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Workers? Compensation Commission, and institutions for higher education) which makes rules or determines contested cases.

(6) Allocations--For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(7) Base rate--The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

(8) Billing period--The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(9) Certificate--The definition of certificate is that definition given to certificate of convenience and necessity in this subchapter.

(10) Certificate of Convenience and Necessity--A permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(11) Certificate of Public Convenience and Necessity--The definition of certificate of public convenience and necessity is that definition given to certificate of convenience and necessity in this subchapter.

(12) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

(13) Code--The Texas Water Code.

(14) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(15) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(16) Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(17) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(18) Incident of tenancy--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(19) Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(20) License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(21) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the Texas Water Code.

(22) Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(23) Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(24) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(25) Membership fee--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of Texas Water Code, §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(26) Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(27) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(28) Nonfunctioning system--A utility under the supervision of a receiver or temporary manager pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager), respectively.

(29) [~~(28)~~] Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(30) [~~(29)~~] Physician--Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(31) [~~(30)~~] Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(32) [~~(31)~~] Potable water--Water that is used for or intended to be used for human consumption or household use.

(33) [~~(32)~~] Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(34) [~~(33)~~] Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(35) [~~(34)~~] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(36) [~~(35)~~] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(37) [~~(36)~~] Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(38) [~~(37)~~] Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(39) [~~(38)~~] Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(40) [~~(39)~~] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(41) [~~(40)~~] Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(42) [~~(41)~~] Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(43) [~~(42)~~] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(44) [~~(43)~~] Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(45) [~~(44)~~] Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(46) [~~(45)~~] Standby fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(47) [~~(46)~~] Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(48) [~~(47)~~] Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(49) [~~(48)~~] Temporary water rate provision--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(50) [~~(49)~~] Test year--The most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(51) [~~(50)~~] Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(52) [~~(51)~~] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(53) [~~(52)~~] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(54) [~~(53)~~] Water supply or sewer service corporation--Any nonprofit corporation organized and operating under Texas Water Code, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service

may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's by-laws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(55) [~~(54)~~] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.14. Emergency Orders.

(a) The commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; and/or

(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(b) The commission or executive director may also issue orders under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions):

(1) to appoint a temporary manager under Texas Water Code, §5.507 and §13.4132; and/or

(2) to approve an emergency rate increase under Texas Water Code, §5.508, [~~and~~] §13.4133 and §13.046.

(c) If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6091

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SUBCHAPTER B. RATES, RATE MAKING, AND RATES/TARIFF CHANGES

30 TAC §291.21

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. Additionally, TWC, §13.046 requires the commission to adopt rules that allow a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system. Finally, TWC, §13.188, mandates that the commission shall adopt a procedure allowing a utility to file an application with the commission to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs.

The proposed amendment implements TWC, §§13.046, 13.147 and 13.188.

§291.21. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under Texas Water Code (TWC), §13.187(a) (relating to Statement of Intent to Change Rates) after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in TWC, §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service that enters into an agreement in accordance with TWC, §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of

convenience and necessity to operate as a public utility. The tariff must be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) Minor tariff changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county may change rates for water or wastewater service without commission approval but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The executive director may approve the following minor changes to tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(v) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate;

(vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC, §13.250(b)(2) or §13.147(d);

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs; or

(viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons.

(B) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff revisions and tariffs filed with rate changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the schedule is applicable.

(5) Tariff sheets. Tariff sheets must be numbered consecutively. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;

(3) the certificate of convenience and necessity number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the form used deviates from that specified in §290.47(d) of this title (relating to Appendices);

(6) the extension policy;

(7) an approved drought contingency plan as required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers); and

(8) the form of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariffs must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and must include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the com-

mission a copy of its current tariff that has been authorized by the municipality.

(h) Purchased water or sewage treatment provision.

(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.

(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.

(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The executive director's review of a proposed revision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.

(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(A) submit a written notice to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."

(5) Notice to the commission must include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under TWC, §13.187 is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.

(k) Surcharge.

(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(2) If specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(A) sampling fees not already included in rates;

(B) inspection fees not already included in rates;

(C) production fees or connection fees not already included in rates charged by a groundwater conservation district; [~~or~~]

(D) other governmental requirements beyond the control of the utility; or [.]

(E) costs under TWC, §13.046 to allow the retail public utility to charge a reasonable rate for interconnection costs, other costs incurred in making services available and costs that will be incurred to bring the nonfunctioning system into compliance with the commission's rule.

(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission, unless otherwise directed by the executive director. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the executive director.

(4) The executive director may authorize a surcharge to reflect an increase or decrease in documented energy costs. Documented decreases in energy costs must be refunded within a reasonable time to the utility's customers. The pass through, whether an increase or decrease, shall be implemented on no later than an annual basis unless the executive director determines a special circumstance applies. This adjustment is an uncontested matter not subject to a contested case hearing, however the executive director shall hold an uncontested public meeting on the request of a member of the legislature who represents the area served by the water and/or sewer utility or if the executive director determines that there is substantial public interest in the matter.

(l) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover from customers revenues that the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over-recovery of revenues from customers. A temporary water rate provision may not be implemented by a utility if there exists an available, unrestricted, alternative water supply that the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.

(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is:
Figure: 30 TAC §291.21(l)(3) (No change.)

(A) The utility shall file a temporary water rate application prescribed by the executive director and provide customer notice as required in the application, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the classes of customers affected, the rates affected, information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, the time frame for protests, and any other information that is required by the executive director in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §291.23 of this title (relating to Time between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision even if no other rates are proposed to be changed. The utility shall complete a rate application and provide notice in accordance with the requirements of §291.22 of this title (relating to Notice of Intent To Change Rates). The utility's existing rates are subject to review in addition to the temporary water rate provision.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate into effect only after:

(A) the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. The executive director's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed implementation.

(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Texas Commission on Environmental Quality to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.

(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.

(m) Multiple system consolidation. Except as otherwise provided in subsection (o) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(n) Regional rates. The commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

(o) Exemption. Subsection (m) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER C. RATE-MAKING APPEALS

30 TAC §291.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendment implements TWC, §49.2122.

§291.41. Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by Texas Water Code, §5.235 and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.

(b) An appeal under Texas Water Code, §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Texas Water Code, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the executive director.

(d) In an appeal under Texas Water Code, §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under the Texas Water Code, §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under the Texas Water Code, §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility and accompanied by the filing fee as required by Texas Water Code, §5.235.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the

regular membership or tap fees. An appeal under Texas Water Code, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a $100 filing fee as required by Texas Water Code, §5.235.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and Texas Water Code, §49.2122, Texas Water Code, §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under Texas Water Code, §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The appeal must be accompanied by a $100 filing fee as required by Texas Water Code, §5.235. The commission shall approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §291.87, §291.88

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendments implement TWC, §13.147 and Local Government Code, §402.911.

§291.87. Billing.

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either $5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage;

(O) the local telephone number or toll free number where the utility can be reached.

(3) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water Code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) [~~(g)~~] Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer

for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i) [~~(h)~~] Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(j) [~~(i)~~] Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(k) [~~(j)~~] Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(l) [~~(k)~~] Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §291.88 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title.

(m) [~~(l)~~] Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(n) [~~(m)~~] Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(o) [~~(n)~~] Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(p) [~~(o)~~] Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract;

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been prop-

erly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director; or

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §291.88(h)(2) of this title and §291.89(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(q) [~~(p)~~] Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.

(r) [~~(q)~~] Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

§291.88. Discontinuance of Service.

(a) Disconnection with notice.

(1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:

(A) the words "termination notice" or similar language approved by the executive director written in a way to stand out from other information on the notice;

(B) the action required to avoid disconnection, such as paying past due service charges;

(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the executive director;

(D) the intended date of disconnection;

(E) the office hours, telephone number, and address of the utility's local office;

(F) the total past due charges;

(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.

(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:

(i) that failure to pay past due sewer charges will result in termination of water service; and

(ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.

(iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;

(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;

(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to [~~Service~~] Applicant and Customer Deposit);

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and

(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.

(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:

(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;

(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.89 of this title (relating to Meters).

(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) failure to pay for utility service provided to a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for non-utility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.89 of this title [~~(relating to Meters)~~];

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;

(7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;

(8) refusal of a current customer to sign a service agreement; or,

(9) failure to pay standby fees.

(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §291.114 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.

(e) Disconnection of water service due to nonpayment of sewer charges.

(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.

(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.

(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed $50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.

(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:

(i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,

(ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

(2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.

(3) This section outlines the duties of a water service provider to an area served by a sewer service provider of certain political subdivisions.

(A) This section applies only to an area:

(i) that is located in a county that has a population of more than 1.3 million; and

(ii) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.

(B) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

(C) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other wa-

ter utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.

(D) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by First Class mail or hand-delivered to the location at which the sewer service is provided.

(E) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under subparagraph (D) of this paragraph. The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.

(F) This subsection does not apply to a nonprofit water supply or sewer service corporation created under Texas Water Code, Chapter 67, or a district created under Texas Water Code, Chapter 65.

(f) Disconnection for ill customers. No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.

(g) Disconnection upon customer request. A utility shall disconnect service no later than the end of the next working day after receiving a written request from the customer.

(h) Service restoration.

(1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid or other circumstances which resulted in disconnection are corrected, the utility must restore service within 36 hours.

(2) Reconnect Fees.

(A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.

(B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.

(C) Except as provided under §291.89(c) of this title [~~(relating to Meters)~~] when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed $25 provided the customer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.

(D) A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6091

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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

30 TAC §§291.101, 291.105, 291.113

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendments implement TWC, §13.2451 and Local Government Code, §402.017.

§291.101. Certificate Required.

(a) Unless otherwise specified, a utility, a utility operated by an affected county except an affected county to which Local Government Code, §412.017 applies, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the

Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

§291.105. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a map and description of only the proposed service area by:

(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) a copy of the recorded plat of the area, if it exists, with lot and block number; and

(E) maps as described in §291.119 of this title (relating to Filing of Maps);

(F) a general location map; and

(G) other maps as requested by the executive director or required by §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity);

(3) a description of any requests for service in the proposed service area;

(4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definitions of Terms);

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the proposed service area;

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN for a new or existing system, a copy of:

(A) the approval letter for the commission-approved plans and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;

(B) other information that indicates the applicant is in compliance with §291.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §291.93 of this title;

(15) for a sewer CCN for a new or existing facility, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the commission;

(B) other information that indicates that the applicant is in compliance with §291.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §291.94 of this title; and

(16) any other item required by the commission or executive director.

(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraph (3) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(5) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(c) Extension beyond extraterritorial jurisdiction.

(1) If [~~Except as provided by paragraph (2) of this subsection, if~~] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Texas Water Code (TWC), §13.241, in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.

[~~(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. For those areas served by a municipality out its extraterritorial jurisdiction before September 1, 2005, pursuant to a CCN, a landowner in such an area who regularly receives and pays for service from the municipality is deemed to have consented to the CCN, unless the landowner specifically objects in writing to such service.~~]

(3) To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by Texas Water Code, §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

§291.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may on its own motion or on receipt of a petition revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; [~~or~~]

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code, §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or [~~.~~]

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. Prior to the petition being filed with the commission, the petitioner shall deliver, via certified mail, a copy of the petition to the

certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsection (b) of this section but is entitled to contest the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 90 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Texas Water Code, §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas

Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers ; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under Texas Water Code, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800214
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-6091

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SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §291.144

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. Finally, TWC, §13.046, requires the commission to provide a reasonable period for a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to bring the nonfunctioning system into compliance with the commission rules during which the commission shall not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system.

The proposed amendment implements TWC, §13.046.

§291.144. Fines and Penalties.

(a) [~~Disposition.~~] Fines and penalties collected under Texas Water Code, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(b) The commission shall provide a reasonable period for the retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission rules, during which the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.6, §335.25

The Texas Commission on Environmental Quality (commission or agency) proposes amendments to §335.6 and §335.25.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bills 1457 and 1719, 80th Legislature, 2007, Regular Session, amended Texas Water Code (TWC), §26.303(a)(1) and Texas Agriculture Code, §201.026(b), (c), (f) - (j), respectively. The rulemaking will meet the statutory requirements of House Bill 1719 which eliminates certain notification requirements and House Bill 1457 which eliminates the use of poultry carcasses as swine food.

House Bill 1719 eliminated the requirement to notify the commission of the burial of animal carcasses provided that at the time of disposal of animal carcasses on-site, the landowner has requested and complies with a water quality management plan developed for that site under Texas Agricultural Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution). House Bill 1457 eliminates the disposal option of using poultry carcasses as swine food.

SECTION BY SECTION DISCUSSION

Proposed §335.6(c) will exempt landowners who comply with a certified water quality management plan developed for their site under Texas Agricultural Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) from notification requirements found in §335.6(a) and (b). This amendment will meet the statutory requirements of House Bill 1719.

The proposed amendment to §335.25(a)(6) would eliminate the disposal option of using poultry carcasses for swine food. Items following subsection (a)(6) will be re-numbered to acknowledge removal of this subsection. The elimination of the use of poultry carcasses as swine food will make this section consistent with the Texas Agriculture Code, which currently prohibits the use of poultry carcasses as swine food. These amendments will meet the statutory requirements of House Bill (HB) 1457.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement statutory changes required by HB 1457 and HB 1719, 80th Legislature by amending the appropriate sections of Chapter 335. HB 1457 eliminated the option to use poultry carcasses as swine food. HB 1719 eliminated the need for a landowner to notify the agency regarding the burial of animal carcasses if, at the time of burial, the landowner has requested and complies with a water quality management plan under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution).

In general, local governments do not participate in the types of businesses that would generate poultry or other animal carcasses. Therefore, the proposed rulemaking is not anticipated to have a fiscal impact on local governments.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and protection of public health and safety concerning disposal of animal carcasses.

The proposed rulemaking is not expected to have a significant fiscal impact on landowners and poultry growers required to properly manage the disposal of carcasses resulting from livestock and poultry die-offs. While the proposed rulemaking does eliminate one disposal method for poultry carcasses, other methods more commonly used remain available as disposal options. Given the remaining disposal options, disallowing the disposal of poultry carcasses by using them as swine food will not significantly change disposal methods used by producers, and no significant fiscal implications are expected as a result of this rulemaking. The rulemaking also eliminates the cost of preparing any paperwork to notify the agency of the burial of animal carcasses if the landowner requests and complies with a water quality management plan. However, any cost savings is not anticipated to be significant. Any cost savings or increases under the proposed rulemaking would vary depending on the location and size of the operation, and staff is unable to estimate the amount of savings.

Although the agency permits over 800 concentrated animal feeding operations (CAFOs) and 16-egg laying operations, it does not track how many of these operations are considered to be large or small businesses. Consequently, the agency does not have the necessary data available to determine the number of poultry operations and livestock operations statewide that may be affected by the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The agency permits over 800 concentrated animal feeding operations (CAFOs) and 16-egg laying operations but does not have the data to determine how many animal operations statewide may be affected by the proposed rules nor does it have the data needed to determine how many of these facilities might be classified as small or micro-businesses.

While the proposed rulemaking does eliminate one disposal method for poultry carcasses, other methods more commonly

used remain available as disposal options, and the elimination of the use of poultry carcasses as swine food is not expected to have a significant fiscal impact on small or micro-business poultry producers. The proposed rulemaking eliminates the cost of paperwork associated with carcass burial if a landowner requests and complies with a water quality management plan.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect any local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the act.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to conform commission rules to the newly amended language of Texas Agriculture Code, §201.026(g), as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution), and Texas Water Code, §26.303(a)(1). The proposed rulemaking does this by exempting landowners who comply with a certified water quality management plan under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) from the notification requirements imposed by §335.6(a) and (b), and by eliminating "cooking for swine food" as an acceptable method of disposal of poultry carcasses. Since the proposed rulemaking simply harmonizes commission rules with the Texas Agriculture Code and Texas Water Code, there will be no impact on the environment, human health, or public health and safety. In this same way, the proposed rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. The commission concludes that the proposed rulemaking does not meet the definition of a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the proposed rulemaking does not exceed an express requirement of state law, but rather is necessary to harmonize commission rules with Texas Agriculture Code, §201.026(g), as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) and Texas Water Code, §26.303(a)(1). Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program. Finally, the commission adopts the proposed rulemaking under Texas Water Code, §§5.103, 5.105, and 26.303(a), and under Texas Health and Safety Code, §361.017 and §361.024. Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to conform commission rules to the newly amended language of Texas Agriculture Code, §201.026(g), as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) and Texas Water Code, §26.303(a)(1). This rulemaking substantially advances that stated purpose by exempting landowners who comply with a certified water quality management plan under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) from the notification requirements imposed by §335.6(a) and (b), and by eliminating "cooking for swine food" as an acceptable method of disposal of poultry carcasses.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit the owner's right to real property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rulemaking exempts landowners with a water quality management plan in place from notifying the commission before burying animal carcasses on their property, and eliminates "cooking for swine food" as an acceptable method of disposal of poultry carcasses. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and determined that the proposed rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, concerning Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on February 26, 2008 at 10:00 am in E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic copies may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2007-042-335-PR. The comment period closes March 3, 2008. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/proposes_adopt.html*. For further information, please contact Tom Weirich, Industrial and Hazardous Waste Permits Section, (512) 239-6609.

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; TWC §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC; and TWC, §26.303(a), which authorizes the commission to adopt rules for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 26.303(a) and THSC, §361.017 and §361.024.

§335.6. Notification Requirements.

(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(c) A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.

(d) [~~(c)~~] Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification

using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(e) [~~(d)~~] Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste; and

(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.

(f) [~~(e)~~] Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(g) [~~(f)~~] Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(h) [~~(g)~~] Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(i) [~~(h)~~] Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(j) [~~(i)~~] The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection of this section; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(k) [~~(j)~~] Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).

(l) [~~(k)~~] Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of (Solid Waste, (§335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title, and Subchapter H of this chapter.

§335.25. Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses.

(a) Acceptable methods for disposal of poultry carcasses include the following storage, processing, and disposal methods:

(1) placement in a landfill permitted by the commission to receive municipal or industrial solid waste;

(2) composting, as defined in §332.2 of this title (relating to Definitions), and as further described in §332.23 of this title (relating to Operational Requirements);

(3) cremation or incineration;

(4) extrusion;

(5) rendering; and

[~~(6) cooking for swine food; and~~]

(6) [~~(7)~~] any other method the commission determines to be appropriate.

(b) Prior to disposition by any method listed in subsection (a) of this section, poultry facilities may:

(1) store poultry carcasses on site for no more than 72 hours provided that storage is in a varmint-proof receptacle to prevent odor, leakage, or spillage, but

(2) shall freeze, or refrigerate at a temperature of 40 degrees Fahrenheit or less, any poultry carcasses which require on-site storage for more than 72 hours.

(c) Poultry carcasses may not be disposed of by burial on-site except in the event of a major die-off that exceeds the capacity of a poultry facility to store and process poultry carcasses by the normal means used by the facility. A mortality rate of 0.3% or more per day of the facility's total poultry inventory shall be deemed a major die-off for the purposes of this section. This subsection supersedes any provisions of a permit or other authorization issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. This section does not authorize violation of any applicable regulations or laws.

(d) Transportation of poultry carcasses to an off-site location for final disposition shall be in accordance with applicable local, state or federal regulations or laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Commission on Environmental Quality (commission, TCEQ, or agency) proposes the repeal of §§344.1, 344.4, 344.10, 344.49, 344.58 - 344.63, 344.70 - 344.73, 344.75, 344.77, and 344.90 - 344.96; and proposes new §§344.1, 344.20 - 344.24, 344.30 - 344.38, 344.40 - 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed new rules would establish the duties and responsibilities of irrigators, irrigation technicians, and irrigation inspectors; provide clarification for better enforcement; reflect the change in the agency name; update statutory references; and correct grammar and cross-references. The proposal would implement changes made to Texas Occupations Code (TOC), §1903.053 and §1903.251, and the addition of Texas Water Code (TWC), §49.238, and Texas Local Government Code (TLGC), §401.006, by House Bill (HB) 4, HB 1656, and Senate Bill (SB) 3, 80th Legislature, 2007. This proposal would also address local, state, and national demands for conserving and protecting the state's water resources.

Although technology and conservation methods have evolved over the years, no substantive changes have been incorporated into the existing rules since 1996. The proposed new rules would ensure that the agency's rules are up to date and consistent with statutory standards and help to ensure that the rules are effective. Because of the number of changes made, repealing the existing rules in their entirety and proposing new rules make the changes easier to present and understand. The proposed new rules are reorganized to provide better readability. The proposed new rules would revise existing criteria for the design, installation, service, and operation of irrigation systems to be consistent with best industry practices and technology.

House Bill 4 and SB 3 direct the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators.

HB 1656 adds a new landscape irrigation license classification, irrigation inspector, and directs municipalities with populations of 20,000 or more to adopt ordinances that require irrigation inspectors be licensed by the commission and obtain a permit before installing an irrigation system. Municipalities must adopt standards and specifications for designing, installing, and operating irrigation systems and include any rules adopted by the agency that are related to landscape irrigation. Municipalities may employ or contract with a licensed plumbing inspector or licensed irrigation inspector to enforce the ordinance. Municipalities may collect a fee to recover costs of the program. Municipalities must exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well and used by the property owner for domestic use.

HB 1656 allows water districts to adopt rules that meet the same criteria as municipalities, except that districts may employ or contract with a licensed plumbing inspector, a licensed irrigation inspector, the district's operator, or another governmental entity to enforce the rules. Water districts must exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well and used by the property owner for domestic use.

As required by HB 4, §19 and SB 3, the commission must adopt standards no later than June 1, 2008, with an effective date of January 1, 2009. Therefore, the proposed effective date of the repeal of the existing Chapter 344 and replacement with new Chapter 344 is January 1, 2009.

The existing Chapter 344 would be repealed. A new chapter would be proposed that is consistent with HB 4, HB 1656, and SB 3, compatible with best irrigation practices, and that improves readability.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

Proposed new §344.1, Definitions, would define air gap; Atmospheric Vacuum Breaker; backflow prevention; backflow prevention assembly; completion of irrigation system installation; consulting; cross-connection; design; design pressure; Double Check Valve; emission device; employed; head-to-head spacing; health hazard; hydraulics; inspector; installer, irrigation inspector; irrigation plan; irrigation services; irrigation system; irrigation technician; irrigation zone; irrigator; irrigator-in-charge, landscape irrigation; license; mainline; maintenance checklist; major maintenance, alteration, repair, or service; master valve; matched precipitation rate; new installation; non-health hazard; non-potable water; pass-through contract; potable water; Pres-

sure Vacuum Breaker; reclaimed water; records of landscape irrigation activities; Reduced Pressure Principle Backflow Prevention Assembly; static water pressure; supervision; water conservation; zone flow; and zone valve. Three definitions in the existing section, "Non-toxic Substance," "Precipitation Zones," and "Toxic Substance" are not being proposed in the new section because the terms are not used in this chapter. The definition of "Council" in the existing section is not proposed in the new section. The definition is not necessary, because the use of the term "council" in §344.80 means the Irrigator Advisory Council.

Subchapter B, Standards of Conduct for Irrigators, Installers, Irrigation Technicians, and Irrigation Inspectors, and Local Requirements

Proposed new Subchapter B would establish certain standards of conduct for licensees and would establish requirements for local regulations and inspections. The new Subchapter B incorporates the existing §§344.90 - 344.92 and part of §344.93.

Proposed new §344.20, Purpose of Standards, would establish the reasons for these standards of conduct. The proposal would implement changes made to TOC, §1903.053 and §1903.251 and the addition of TWC, §49.238 and TLGC, §401.006, by HB 4, HB 1656 and SB 3, 80th Legislature, 2007. Proposed new §344.20 is similar to and would update the existing §344.90 to include irrigation inspectors and irrigation technicians.

Proposed new §344.21, Intent, would establish the intent of these standards. It is necessary to prescribe responsibilities of licensees in accordance with TOC, §1903.053(a)(4). The section is similar to the existing §344.91. Specific references to enforcement activities would be added by the proposed rule.

Proposed new §344.22, Proficiency in the Field of Irrigation; Representation of Qualifications, would establish the requirement that irrigators, installers, irrigation technicians, and inspectors exhibit knowledge and proficiency when performing irrigation activities. The proposed §344.22 would also establish the requirement that irrigators, installers, irrigation technicians, irrigation inspectors, and business owners accurately and truthfully represent their qualifications. The proposed new rule would require irrigators, installers, irrigation technicians, and inspectors to be knowledgeable of local requirements related to landscape irrigation. The requirements are necessary to help ensure efficient irrigation practices.

Proposed new §344.23, Irrigation Practice, would prohibit false, misleading or deceptive practices related to irrigation services. The existing rule, §344.93(c), only applies to false, misleading, or deceptive practices related to bidding or advertising of services and fees by irrigators or installers. The proposed new rule would add selling, installing, maintaining, altering, repairing, servicing or inspection to the prohibition. This new requirement is necessary to help ensure efficient irrigation practices.

Proposed new §344.24, Local Regulation and Inspection, would establish that irrigators, installers, irrigation technicians, and inspectors must comply with local requirements, ordinances, and regulations. The existing rule, §344.70, applies to irrigators and installers. The proposed new rule would add irrigation inspectors and irrigation technicians to the rule. The proposed new rule would allow regulatory authorities to inspect irrigation systems connected to their public water systems. The language is similar to existing §344.71, except the existing rule states that it "is not required to be inspected" and the proposed rule states that the system "may" be inspected. The proposed rule requires municipalities with a population of 20,000 or more and water districts that implement irrigation programs to verify that the irrigator that designs and installs an irrigation system holds a valid license and has obtained the necessary permits prior to the installation. These entities must also conduct inspections to verify that the design and installation meet the requirements contained in this chapter or the local ordinance or rules, if more stringent. The proposed rule would require each inspector to maintain a log of inspections for three years. The proposed rule would exempt from the inspection requirements a landscape irrigation system that is part of an on-site sewage disposal system, an agricultural operation or is connected to a well used by the property owner for domestic use. It is necessary to set these standards to better enforce the landscape irrigation rules.

Subchapter C, Requirements for Licensed Irrigators, Installers, Irrigation Technicians, and Irrigation Inspectors

Proposed new Subchapter C would establish the duties and responsibilities of irrigators, installers, irrigation technicians, landscape irrigation business owners, and irrigation inspectors. It is necessary to define the responsibilities of those who engage in landscape irrigation in order to provide a better understanding of these responsibilities and to better enforce the landscape irrigation rules. Proposed new Subchapter C incorporates the existing §§344.4, 344.49, and 344.58.

Proposed new §344.30, License Required, would require irrigators, installers, irrigation technicians, and irrigation inspectors to hold a valid license. The requirement in the existing chapter for installers to work under the supervision of a licensed irrigator when connecting an irrigation system to a water supply would continue. The proposed rule would establish an irrigation technician's role on January 1, 2009, to allow the irrigation technician to install, maintain, alter, repair, and service an irrigation system as well as connect an irrigation system to the water supply under the direction of a licensed irrigator. The licensed irrigator would be responsible for the work performed by an irrigation technician on a landscape irrigation system. This section also addresses the license requirements for an inspector that may be employed or contracted by a municipality or water district to enforce landscape irrigation ordinances or rules.

Proposed new §344.31, Exemption for Business Owner Who Provides Irrigation Services, would establish the conditions under which a business owner could engage in irrigation activities by employing an irrigator to supervise irrigation activities of the business, as established in TOC, Chapter 1903.

Proposed new §344.32, Responsibilities of a Business Owner Who Provides Irrigation Services, would place responsibility on the landscape irrigation business owner to ensure landscape irrigation services are supervised by a licensed irrigator serving as the irrigator-in-charge. The business owner would be responsible for verifying the validity of the license of any irrigator, installer or irrigation technician working for the business. Because the owner guides the direction of the company, a business owner must ensure irrigation activities are performed in a responsible manner.

Proposed new §344.33, Display of License, would make administrative changes to correct grammar and would require licensees to present their license upon request to any business owner, irrigator, or regulatory authority with jurisdiction over landscape irrigation. Additionally, the irrigator, installer, and irrigation technician licensee are accountable to provide proof of licensure when requested by any regulatory authority, irrigation system's owner, or prospective owner. Irrigators, installers, and irrigation

technicians would be required to display their license at their place of business. The requirement for an irrigation inspector to present the license when requested by a regulatory authority is addressed in this section.

Proposed new §344.34, Use of License, would establish who may use a license and how it may be used. The proposed rule would establish a requirement that an irrigator-in-charge can perform irrigation services at only one entity as an irrigator-in-charge, but may work at other businesses performing irrigation services. The proposed rule would include requirements for the use of license and license number by an irrigation inspector.

Proposed new §344.35, Duties and Responsibilities of Irrigators, would establish that an irrigator would be responsible for all permits, contracts, agreements, advertising or other irrigation activity secured and performed using the irrigator's license. The proposed rule would require the irrigator to comply with all of the rules contained in the chapter when performing irrigation work. The proposed rule would require a licensed irrigator to supervise irrigation activities for an unlicensed business owner. It is necessary to set out specific requirements for irrigators doing these irrigation activities because TOC, Chapter 1903 addresses the duties and responsibilities for landscape irrigation activities.

Proposed new §344.36, Duties and Responsibilities of Installers and Irrigation Technicians, would establish the duties and responsibilities of licensed installers and irrigation technicians. The current duties and responsibilities of installers include connecting irrigation systems to water supplies and installing an approved backflow prevention method as indicated on the site irrigation plan or according to the licensed irrigator's instructions. The proposed rule would allow an irrigation technician, beginning January 1, 2009, to connect, maintain, alter, repair, service, and direct the installation of an irrigation system under the direct supervision of a licensed irrigator. It is necessary to define the duties and responsibilities of irrigation technicians to help ensure the safe and efficient operation of the irrigation system.

Proposed new §344.37, Duties and Responsibilities of Irrigation Inspectors, would establish that an irrigation inspector must enforce the rules or ordinances of the employing entity. It is necessary to establish the duties and responsibilities of irrigation inspectors to protect the water supply.

Proposed new §344.38, Irrigator, Installer, and Irrigation Technician Records, would establish the requirement that irrigators, installers, and irrigation technicians make all landscape irrigation designs, invoices, contracts, advertisements, warranties, or other irrigation business records or documents available upon request to any governing authority within two business days of a request. This change is necessary to help ensure effective enforcement of and compliance with regulations that relate to landscape irrigation.

Subchapter D, Licensed Irrigator Seal

The new subchapter removes the existing requirement for the licensed irrigator to submit a copy of the seal on letterhead or business stationery and to notify the executive director of any changes in the seal or rubber stamp facsimile. The executive director may obtain a copy of the seal or rubber stamp facsimile, if necessary, on a case-by-case basis. A seal is required on the design, irrigation plan and other documents provided to the irrigation system's owner. It is necessary to set requirements for the seal and for use of the seal. The proposed rule incorporates part of existing §344.59.

Proposed new §344.40, Seal Required, would require each licensed irrigator to obtain a seal. The proposed rule would prohibit licensed irrigators from engaging in landscape irrigation work until they possess the seal and license. The change is necessary to ensure effective enforcement of and compliance with regulations related to landscape irrigation to protect the water supply.

Proposed new §344.41, Seal Design, would prescribe the appearance of a seal. This new section contains requirements identical to those in the existing §344.60, except that the new section explains that the license number on the seal does not need to contain the leading zeros. The proposed rule would require the irrigator to be responsible for the security of the seal. The proposed rule would better explain the seal requirements.

Proposed new §344.42, Seal Display, would prescribe that the seal or electronic seal and signature be visible and legible on the original document and when the document is copied or reproduced. The proposed rule incorporates parts of §344.60 and would address new technology. It is necessary to explain the responsibilities of a licensed irrigator in displaying the seal on documents.

Proposed new §344.43, Seal Use, would establish the required uses of a seal. Grammatical changes were made from the existing rule. The change in structure would simplify the section. The section would also require irrigators to sign their legal name and affix their seal on documents presented to irrigation system owners or the owner's representative. The proposed rule would require the irrigator to accept responsibility for documents that have the seal, for work performed in accordance with the sealed document, and to ensure that a system was properly installed in accordance with rules and ordinances. The proposed rule would require irrigators to maintain a copy of all sealed documents for three years. The proposed rule would require that once a seal is utilized on a document, the seal cannot be altered. The proposed rule would describe how a seal could be used on a design or specification created by another irrigator. The proposed rule contains a new requirement that the irrigator sign below the seal rather than over the seal. The proposed change would make the irrigator's signature more legible. The proposed rule replaces existing §§344.61 - 344.63. It is necessary to explain the responsibilities of a licensed irrigator in using the seal on documents.

Subchapter E, Backflow Prevention and Cross-Connections

Proposed new §344.50, Backflow Prevention Methods, would establish a requirement that all irrigation systems connected to potable water supplies be connected through an approved backflow prevention method. The proposed new section describes the types of backflow prevention methods that are approved, the conditions of use, and installation standards. The change in structure from the existing chapter would improve the section's readability and help to ensure the protection of water supplies. This section would replace existing §344.73. The changes would provide irrigators, installers and irrigation technicians with a central location to determine which types of backflow prevention assemblies are appropriate for use in specific irrigation applications in Texas.

Proposed new §344.50(a) would establish the requirements for approved backflow prevention methods and their installation. The proposed rule also includes methods to determine which

manufacturer's equipment, model, size, and method of installation are approved for use in the United States.

Proposed new §344.50(b) would establish the backflow prevention methods that are to be used in conditions that present a health hazard, and prescribe how the device must be installed. The standards are necessary to help ensure the protection of water supplies.

Proposed new §344.50(c) would explain that a backflow prevention device used in a landscape irrigation system designated as a health hazard must be inspected upon installation and annually thereafter. This requirement is in §290.44(h)(4) of this title and is included in this chapter as a convenience and better informs irrigators and irrigation system owners of backflow prevention requirements.

Proposed new §344.50(d) would establish when and how a double check valve backflow prevention assembly may be used and would allow the assembly to be used under conditions that do not present a health hazard. It is necessary to provide specific information in the use of a double check valve to help ensure proper use and to protect the water supply.

Proposed new §344.50(e) would establish certain installation requirements when a double check valve is installed below ground. The proposal includes a new provision that requires a clearance between any fill material and the bottom and the sides of the double check valve to allow for testing and repair. The proposal would require the installation of a y-type strainer on the discharge side of the double check valve. The standards are necessary to help ensure the protection of water supplies.

Proposed new §344.51, Specific Conditions and Cross-Connection Control, replaces existing §344.75, and would establish specific conditions relating to cross connections and would prescribe the requirements in different situations. The identification of these conditions is necessary to help ensure the protection of water supplies. Additionally, the title change would more accurately reflect the subject matter of the section.

Proposed new §344.51(a) would establish the approved backflow prevention method when chemicals are added to the water in the irrigation system. This requirement is necessary for the protection of water supplies and for consistency with 30 TAC Chapter 290, Public Drinking Water.

Proposed new §344.51(b) would prohibit the interconnection of potable and non-potable water sources in an irrigation system. This requirement is necessary for the protection of water supplies and for consistency with 30 TAC Chapter 290.

Proposed new §344.51(c) would establish that irrigation system components utilizing chemical additives must be connected to a potable water system using a reduced pressure principle backflow prevention assembly.

Proposed new §344.51(d) would establish specific requirements and limitations for irrigation systems that are located on a property that is served by an on-site sewage facility. Specific requirements that relate to the design and installation of an irrigation system that is located on a property that is served by an on-site sewage facility system are necessary for the preservation of the health and safety of the public.

Proposed new §344.52, Installation of Backflow Prevention Device, would describe how and when backflow prevention devices should be installed. The requirements will help protect the water supply.

Proposed new §344.52(a) would require backflow protection devices be installed on existing irrigation systems that do not have an approved backflow prevention method when certain maintenance, alterations, repairs, or service are made to the irrigation system. These systems could potentially contaminate water supplies and pose a health and safety risk.

Proposed new §344.52(b) would prohibit, if used, the installation of a master valve upstream of backflow prevention devices. The installation of an automatic master valve upstream of a backflow prevention assembly could prevent accurate testing of the backflow prevention device, as is required in 30 TAC Chapter 290.

Proposed new §344.52(c) would require an irrigator to have the backflow prevention device tested prior to the device being placed in service and to provide the results within 10 business days of the testing to the water purveyor and irrigation system's owner. The testing of the backflow prevention device would help protect the water supply.

Subchapter F, Standards for Designing, Installing, and Maintaining Landscape Irrigation Systems

Proposed new §344.60, Water Conservation, would promote water conservation practices in the field of irrigation. The proposed requirement would add that systems must also be operated to promote water conservation in addition to those requirements in the existing §344.72. The operation of irrigation systems affects the water efficiency of a system.

Proposed new §344.61, Minimum Standards for the Design of the Irrigation Plan, would change the standards for the design of irrigation systems by removing the requirements for wind derating that are currently in existing §344.77(c). The available industry information for wind derating is inadequate. The requirement for minimum standards for precipitation rates currently in existing §344.77(d) would be removed because there are more efficient means to achieve water conservation in irrigation systems. Proposed new §344.61 replaces existing §344.77 and would add new requirements. The change in structure from the existing rule is necessary to improve the readability of the section.

Proposed new §344.61(a) would require an irrigator to prepare an irrigation plan for each new installation site. The proposed rule explains how variances from the original plan must be addressed. The proposed rule would require a paper copy of the plan to be on site at all times during the installation of the irrigation system. The irrigation plan would promote water conservation.

Proposed new §344.61(b) would require that the irrigation plan for the proposed irrigation system include a statement of the areas covered and not covered by the irrigation system. A proper design must indicate the intended areas of irrigation. The design of an irrigation system is essential to conserve water.

Proposed new §344.61(c) would establish a list of items that are required in an irrigation plan. The proposed rule would set a scale to be used in drawing the irrigation plan. It is necessary to provide these requirements for designs because proposed new Subchapter F requires that specific design elements be used to conserve water.

Proposed new §344.62, Minimum Design and Installation Requirements, would establish limitations for the use of component parts in a design. Proposed new §344.62(a) replaces existing §344.77 and proposes new requirements. In order to protect the integrity and efficiency of the irrigation system and reduce risks to human health and the environment, the components of an ir-

rigation system should not be used in excess of the limitations that are published by the manufacturer. Irrigation plans should not incorporate design elements that would cause a component to be used in a manner that would exceed the limitations published by the manufacturer.

Proposed new §344.62(b) would establish standards for the spacing of emission devices. The proposed rule would not allow spacing of emission devices further apart than the manufacturer's published specifications. To improve water conservation, the rule proposes a new requirement that does not allow the use of spray or rotary sprinkler heads in areas five feet wide or less and that have impervious surfaces on two or more sides. The rule also proposes a new requirement that irrigation system heads are no closer than four inches to a hardscape, such as a foundation, fence, concrete, asphalt, pavers, or stones set with mortar. The proposed new section would replace existing §344.77(a). It is necessary to establish these standards to promote water conservation.

Proposed new §344.62(c) would establish the requirement that the design and installation of an irrigation system's emission components must ensure that they operate within the manufacturer's published operating pressure range. Irrigation plans would be required to use emission devices that would operate at the minimum and not above the maximum sprinkler head pressure published by the manufacturer. The new section would replace existing §344.77(b). This standard is necessary because systems that operate above or below the recommended operating pressure are inefficient and are prone to either waste water or to result in insufficient irrigation.

Proposed new §344.62(d) would require the design and installation of irrigation systems so that water flow in the pipes would not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe. The excessive velocity of flow can cause damage to components of the irrigation system, thus wasting water.

Proposed new §344.62(e) would establish a requirement for irrigation systems to have separate irrigation zones based on factors such as microclimate, plant material type, topographic features, soil conditions, and hydrological control. Separate zones would promote water conservation.

Proposed new §344.62(f) would establish a requirement for irrigation systems to have matched precipitation rates at all emission devices located in the same zone. Matched precipitation rates would promote water conservation.

Proposed new §344.62(g) would establish a requirement that irrigation systems not spray water over impervious surfaces such as concrete, asphalt, brick, wood, stones set with mortar, walls, fences, sidewalks, streets, etc. Limiting the spray of water over impervious surfaces would conserve water.

Proposed new §344.62(h) would require the master valve be located on the discharge side of the backflow prevention device, if a master valve is used on a newly installed or on an existing system. The location of the master valve could impact the testing of the backflow prevention device. If included, a master valve would conserve and protect the water supply.

Proposed new §344.62(i) would require the use of colored PVC pipe primer solvent. Colored PVC pipe primer solvent would promote better adhesion when cementing pipe joints together, thus minimizing leaking pipes, which would promote water conservation.

Proposed new §344.62(j) would establish the requirement that technology, in the form of rain or moisture sensors, or various other methods, be installed on all new automatic irrigation systems. The requirement could be met by other technologies that are designed to detect moisture and shut off the landscape irrigation system. The requirement would extend to new systems and those with automatic controllers that are replaced during a repair. The use of this technology would promote water conservation.

Proposed new §344.62(k) would establish a requirement for an isolation valve. The isolation valve would allow the water flowing to the irrigation system to be manually turned off without turning off the water supply at the water meter, thereby allowing water to be used for other purposes in a building. This would promote water conservation.

Proposed new §344.62(l) would establish that all piping must be covered according to the manufacturer's published specifications. If there are no specifications, a minimum coverage of six inches would be established by the proposed rule. A two inch minimum coverage is proposed for areas that have utilities or structures that prevent the minimum recommended coverage. The existing rule provides for a variance where utilities, tree roots, or man made structures are encountered. "Structures" in the existing rule would be changed to "man-made structures" for better understanding. A new requirement would require irrigators to use select fill, to compact all trenches and holes created during the installation of irrigation systems, and return the area to the original grade. The new section replaces existing §344.77(e). Pipes that are not properly covered can break more easily and result in wasted water.

Proposed new §344.62(m) would establish standards for the use of electrical wiring and wire splices in an irrigation system, including the minimum depth of cover for wiring. The depth of cover for wiring is necessary in order to conform to the National Electrical Code. The code is not a national law, but its observance is mandated in many states and local areas and represents best practices. The new section replaces §344.77(f). The proposed rule would require electrical wiring that is used to connect the automatic controller to any electrical component to be buried at least six inches deep. Use of approved electrical wiring and proper installation is critical to preventing a health hazard.

Proposed new §344.62(n) would establish that water within an irrigation system is non-potable. The rule would further establish that no drinking or domestic water outlets, such as hoses used to fill swimming pools or decorative fountains could be connected to an irrigation system. The rule would also establish conditions whereby a hose bib could be attached to the irrigation system. The proposed rule would require the hose to be labeled, "Non-potable. Not safe for drinking." The proposed rule would help protect the water supply and public health.

Proposed new §344.62(o) would establish that effective January 1, 2010, an irrigator must be on-site at all times when landscape irrigation activities are being conducted. If the irrigator cannot be on-site, the irrigator would be responsible for ensuring a licensed irrigation technician is on-site to supervise the installation of the irrigation system. It is necessary to set out specific requirements for licensed irrigators during irrigation activities to help ensure the safe and efficient service of irrigation systems.

Proposed new §344.63, Completion of Irrigation System Installation, would establish that the irrigator providing on site supervision must complete four tasks. The first task would require the

irrigator to conduct a final walk through with the irrigation system's owner or owner's representative to explain the operation of the system. Second, the irrigator would provide a maintenance checklist to the irrigation system's owner or the owner's representative. As part of the checklist, the irrigator would provide the manufacturer's manual for the automatic controller, a seasonal watering schedule, a list of parts that require maintenance and a recommended frequency of maintenance and a statement that the system has been installed according to all rules and ordinances and has been adjusted for the most efficient application of water. The checklist would require the signature of the irrigator and the irrigation system's owner or owner's representative. Third, the irrigator must attach a permanent sticker to each automatic controller showing the irrigator's name, license number, company name, telephone number and the dates of the warranty period. Finally, the irrigator would provide a copy of the design plan showing the actual placement of irrigation system components to the irrigation system's owner or owner's representative. It is necessary to set out specific requirements for licensed irrigators during irrigation activities to help ensure the safe and efficient installation of irrigation systems.

Proposed new §344.64, Maintenance, Alteration, Repair or Service of Irrigation Systems, would establish that the irrigator or business owner is responsible for all work performed during the maintenance, alteration, repair or service of irrigation systems during the warranty period. The irrigator or business owner is not responsible for the professional negligence of another irrigator who works on the same system. The proposed rule would require all trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system be returned to the original grade. The proposed rule would require the use of colored PVC pipe primer solvent on pipes and fittings used in the maintenance, alteration, repair, or service of irrigation systems. The proposed rule would require the installation of an isolation valve when maintenance, alteration, repair, or service of an irrigation system involves work at the water meter or backflow prevention device. It is necessary to set out specific requirements for irrigators during irrigation activities to help ensure the safe and efficient maintenance, alteration, repair, and service of irrigation systems.

Proposed new §344.65, Reclaimed Water, would address the use of reclaimed water in landscape irrigation under certain conditions. Having information regarding the use of reclaimed water in landscape irrigation would promote water conservation and help protect the water supply and public health.

Subchapter G, Advertising, Contract, and Warranty

Proposed new §344.70, Advertisement, replaces existing §344.93 and would establish certain requirements for irrigators who choose to advertise in written or electronic media and require that the commission's contact information be prominently displayed at the irrigator's place of irrigation business. The proposed rule would establish a new requirement that the irrigator's license number would be displayed on both sides of trailers used in irrigation activities. It is necessary for all advertisements to include the license number of the irrigator to help ensure that irrigation practices are performed by a person who is qualified to perform them. HB 4 and SB 3 direct the commission to adopt rules governing the duties and responsibilities of irrigators.

Proposed new §344.71, Contracts, replaces existing §344.94 and would establish the information that must be included in estimates, proposals, bids, invoices, and contracts to install landscape irrigation systems. The section would require that documents be written. Certain information must be included in contracts to help ensure compliance with regulations. The proposed new rule would require the dates that the warranty is valid be provided in the contract. Additionally, §344.71(c) would recognize that pass-through contracts, as defined in §344.1(36), do not require the contractor to hold a license but must identify the irrigator and license number responsible for performing the work and providing a warranty. Definition of this type of contract is required for effective enforcement of this chapter.

Proposed new §344.72, Warranties, would replace the existing §344.96 and would establish the requirement that irrigators provide a written warranty on all new installations. The proposed rule would require that the irrigation system's owner or owner's representative be provided a written document for repair work that includes a breakdown of parts and labor that are expended on the job and provide a warranty for the materials and labor. The new section would also require specific information be contained in the written warranty. These requirements are necessary in order to help preserve the water conserving efficiency of irrigation systems and to protect against system failure that could result in wasted water.

Subchapter H, Irrigator Advisory Council

Proposed new §344.80, Irrigator Advisory Council, requirements are essentially the same requirements that are in existing §344.10, with changes to grammar to improve readability. The number of meetings that a council member could miss would be three consecutive regularly scheduled meetings or more than half of the regularly scheduled meetings in one year. The existing requirement is that a council member could miss half of the regularly scheduled meetings and be removed from the council by the commission.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. Local governments are permitted to cover regulation costs through an increase in permitting fees, and in high growth areas of the state, population growth may ensure that water revenues remain the same at the same time water conservation practices are utilized.

The proposed rules have the goal of promoting water conservation and would amend Chapter 344 to comply with the water conservation requirements concerning landscape irrigation systems found in HB 1656, HB 4, and SB 3, 80th Legislature. The proposed rules also repeat some provisions included in the current rules of Chapter 290 so that Chapter 344 serves as a convenient, all inclusive, up to date regulation package for the rules governing landscape irrigation.

HB 4 and SB 3, 80th Legislature, required the agency to adopt rules that govern: water conservation; the connection of an irrigation system to any water supply; the design, installation, and operation of irrigation systems; and the duties and responsibilities of licensed irrigators.

The provisions of HB 1656, 80th Legislature, require the agency to implement rules to specify that: municipalities with a population of 20,000 or more must adopt and enforce a landscape irrigation ordinance; water districts may voluntarily

adopt and enforce landscape irrigation rules; landscape irrigation ordinances and rules must establish certain requirements; municipalities and water districts must employ or contract with a licensed irrigation inspector or a licensed plumbing inspector to enforce ordinances or rules; water districts are also allowed to use the district's operator or another governmental entity to enforce the landscape irrigation rules; and municipalities or water districts are allowed to collect a permitting fee to cover the cost of administering the landscape irrigation program.

The requirements of landscape irrigation ordinances and rules must: require installer or irrigator to hold a license; at a minimum, include TCEQ rules; address obtaining a permit prior to installation of an irrigation system; include minimum standards and specifications for designing, installing, and operating irrigation systems; and exempt: on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a groundwater well and used by the property owner for domestic use.

Although, at a minimum, landscape irrigation ordinances adopted by municipalities or water districts must comply with agency rules, local governments can adopt more stringent criteria for landscape irrigation systems if they desire to do so.

To comply with legislative mandates, reflect best practices of the landscape irrigation industry, and to promote efficient water conservation practices, the proposed rules contain provisions to specify the minimum professional and legal requirements when installing landscape irrigation systems, the controls needed to protect public drinking water and aid in water conservation; the water conservation and system information to be provided to consumers; the warranty standards to be given to consumers, and the record keeping requirements for installed systems.

Cost Implications for Installation of New Landscape Irrigation Systems at State Agencies and Local Governments

The fiscal implications of the proposed rules on state agencies and local governments that might install new landscape irrigation systems are expected to be minimal since these systems would comply with the commercial development standard required by most municipalities and general contractors. The requirements for commercial landscape irrigation systems already comply with many of the requirements under the proposed rules.

Costs Implications for Retrofitting Landscape Irrigation Systems at State Agencies and Local Governments

The proposed rules are not expected to have a significant fiscal impact on state agencies and local governments since they do not require retrofit to an existing system unless there is a need to replace broken automatic controllers. In cases where an automatic controller is replaced, a rain sensor will be required. The cost for this feature ranges from $50 to $100 per controller and cost savings for every day a rain sensor interrupts or delays an automatic watering schedule is estimated to range from $30 to $50.

Costs to Local Governments to Implement Landscape Irrigation Ordinances

There are approximately 117 municipalities that will be required to modify existing ordinances or to adopt and enforce new landscape irrigation ordinances as a result of the proposed rules. An estimated 1,100 water districts may also choose to adopt these ordinances. These local governments will be required to establish a permitting program and have landscape irrigation systems inspected by either a licensed plumbing inspector or a licensed irrigation inspector. Local governments are allowed to recover the costs of this permitting program by increasing fees for landscape irrigation permits if they so choose. Local governments could choose to hire third party contractors to perform inspections, and staff knows that some local governments with landscape irrigation ordinances already include inspection requirements. However, the agency does not track this data in a formal manner. Local governments could spend from $29,000 to $50,000 per year to hire a licensed irrigation inspector. Local governments might incur license exam fees and training costs for any employee serving as a licensed irrigation inspector. These costs are estimated to be $1,300 per applicant in the first year. A license fee of $111 would also be required in the first year. The license must be renewed every three years, and the employee would be required to earn continuing education credits to qualify for renewal. Training costs for continuing education and the license renewal fee is estimated to range from $450 to $560 every three years. If a local government decides to use a third party to inspect landscape irrigation systems, contract costs are estimated to be equivalent to or lower than the cost of hiring, training, and licensing an employee. The total costs of a permitting system would depend on the number of irrigation systems requiring inspection and how a local government chooses to implement the program.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and more efficient landscape irrigation systems that provide enhanced protection and conservation of water supplies.

Staff believes that many landscape irrigators and installers already comply with many of the requirements in the proposed rules. In general, staff expects that any cost increases experienced by landscape irrigation professionals as a result of the proposed rules will be passed on to property owners. These cost increases are not expected to be significant because property owners should experience cost savings to offset the price of an irrigation system before the system reaches the end of its useful life. Landscape irrigation system costs will depend on many design and market factors found in the different areas of the state. The amount of water savings experienced by property owners will also vary greatly depending on the average rainfall of the area, the price of water in the area, and the landscape design. The proposed rules may increase the cost of a landscape irrigation system for an average size yard by $350 to $580. In total, an average residential landscape irrigation system is estimated to cost approximately $2,300 to $3,800 to design and install under the proposed rules.

The proposed rules will require either an irrigator or irrigation technician to be on-site at all times during the installation, maintenance, alteration, repair, or service of an irrigation system beginning January 1, 2010. In addition, the proposed rules require a design plan and other information be given to a property owner as well as specifying that irrigators must retain this information in the irrigator's business records for three years. There are an estimated 6,000 licensed irrigators and 200 licensed installers in the state that install an estimated 70,000 to 80,000 landscape irrigation systems per year. Staff estimates that about 95% of these irrigators operate small or micro-businesses, and the fiscal impact of the proposed rules on these businesses can be found in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT of this fiscal note.

Staff has conservatively estimated that if 25% of water used for irrigation is wasted, a homeowner, on average, could save an estimated $194 per year when an irrigation system that complies with the proposed rules is installed. Over a five year period estimated savings could be as much as $970. An irrigation system is expected to last twenty years or longer.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. There are an estimated 6,000 licensed irrigators and 200 licensed installers in the state, the vast majority of which are small or micro-businesses. Although many of these irrigators already comply with some of these requirements, operations costs, specifically on-site supervision, design, and control costs, could increase by an estimated $350 to $580 per system for irrigators who do not currently operate in a manner compliant with the proposed rules. Again, these costs are not expected to have a significant fiscal impact on irrigators or irrigation technicians since cost increases could be passed on to property owners who are expected to recover any out of pocket expenses through savings on water bills.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are needed to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001 *et. seq.,* and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rules is to address evolving practices and technology in the irrigation industry that relate specifically to water conservation, non-point source water pollution, protection of potable water supplies, responsibilities of licensed landscape irrigators, and enforceability of irrigation rules. These proposed rules also implement HB 4, SB 3 and HB 1656, 80th Legislature, 2007. Although technology and conservation methods have evolved over the years, no substantive changes have been made to these existing rules since 1996. These proposed rules would ensure that the agency's rules are consistent with statutory standards and that they are more reflective of current technical practices and conservation methods. Protection of human health and the environment may be a by-product of the proposed rules, but is not the specific intent of the rules. Therefore, the commission concludes that the proposed rules do not constitute a major environmental rule.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rules do not exceed a federal standard because there are no federal standards regulating the practice of landscape irrigation. The proposed rules do not exceed state law requirements because these rules are required by HB 4, SB 3, and HB 1656. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding landscape irrigation. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency.

Therefore, Texas Government Code, §2001.0225 is not applicable to these proposed rules. The commission invites comment on the draft regulatory impact determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to update the rules to address evolving practices and technology in the irrigation industry, relating specifically to water conservation, non-point source water pollution, protection of potable water supplies, responsibilities of licensed landscape irrigators, and enforceability of irrigation rules. The proposed rules would substantially advance this stated purpose by setting standards for the installation of irrigation systems and by clearly defining the irrigator's, installer's, irrigation technician's, and inspector's responsibilities. The proposed rules would implement HB 4, SB 3, HB 1656, 80th Legislature, 2007.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because the proposed rules would neither burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of these regulations. In other words, these rules would not constitute a statutory or constitutional taking because they only update existing rules to comply with current technical standards and conservation methods and implement new legislation that does not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect

any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on February 26, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Mr. John Gaete, TCEQ, Office of Legal Services, MC205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at *http:/www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project No. 2007-027-344-CE. Comments must be received by 5:00 p.m., March 3, 2008. For further information or questions concerning this proposal, please contact Candice Garrett, TCEQ, Compliance Support Division, (512) 239-1451.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §344.1, §344.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces. These repeals are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These repeals are also proposed under Texas Occupations Code (TOC), §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; TOC, §1903.151, concerning Council Membership; TOC, §1903.152, concerning Eligibility of Public Members; TOC, §1903.155, concerning Presiding Officer; TOC, §1903.157, concerning Meetings; TOC, §1903.158, concerning Per Diem Reimbursement; TOC, §1903.159, concerning Council Duties; and TOC, §1903.251, concerning License Required. Finally, these repeals are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed repeals implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; THSC, §341.033 and §341.034.

§344.1. Definitions.
§344.4. License Required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800218
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-6091

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SUBCHAPTER B. GENERAL PROVISIONS AFFECTING THE IRRIGATOR ADVISORY COUNCIL

30 TAC §344.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

This repeal is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces. This repeal is also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. This repeal is also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; TOC, §1903.151, concerning Council Membership; TOC, §1903.152, concerning Eligibility of Public Members; TOC, §1903.155, concerning Presiding Officer; TOC,

§1903.157, concerning Meetings; TOC, §1903.158, concerning Per Diem Reimbursement; TOC, §1903.159, concerning Council Duties; and TOC, §1903.251, concerning License Required. Finally, this repeal is also proposed under THSC, §341.033, concerning Protection of Public Water Supplies and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed repeal implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; THSC, §341.033 and §341.034.

§344.10. Irrigator Advisory Council.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality
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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS AND LICENSED INSTALLERS

30 TAC §§344.49, 344.58 - 344.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These repeals are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These repeals are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these repeals are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed repeals implement TWC, §§5.013, 5.102, 5.103, 5.105, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.49. Display of License.
§344.58. Unauthorized Use of License.
§344.59. Seal Required.
§344.60. Seal and Rubber Stamp Facsimile Design.
§344.61. Authorized Use of Seal and Rubber Stamp facsimile.
§344.62. Unauthorized Use of Seal or Rubber Stamp.
§344.63. Required Use of Seal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

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Texas Commission on Environmental Quality
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SUBCHAPTER D. STANDARDS FOR LANDSCAPE IRRIGATION

30 TAC §§344.70 - 344.73, 344.75, 344.77

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These repeals are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These repeals are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these repeals are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed repeals implement TWC, §§5.013, 5.102, 5.103, 5.105, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.70. Local Regulation.
§344.71. Local Inspection.

§344.72. Water Conservation.

§344.73. Backflow Prevention Methods.

§344.75. Specific Conditions and Backflow Prevention Devices.

§344.77. Minimum Standards for Design and Installation of Irrigation Systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. STANDARDS OF CONDUCT FOR LICENSED IRRIGATORS AND INSTALLERS

30 TAC §§344.90 - 344.96

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These repeals are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These repeals are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these repeals are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed repeals implement TWC, §§5.013, 5.102, 5.103, 5.105, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.90. Purpose of Standards.

§344.91. Intent.

§344.92. Proficiency in Field of Irrigation; Representation of Qualifications.

§344.93. Advertisement.

§344.94. Contracts.

§344.95. Design.

§344.96. Warranties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER A. DEFINITIONS

30 TAC §344.1

STATUTORY AUTHORITY

This new section is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces. This new section is also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. This new section is also proposed under TWC, §49.238, concerning Irrigation Systems. This new section is also proposed under Texas Local Government Code (TLGC), §401.006, concerning Irrigation Systems. This new section is also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; TOC, §1903.151 concerning Council Membership; TOC, §1903.152, concerning Eligibility of Public Members; TOC, §1903.155, concerning Presiding Officer; TOC, §1903.157, concerning Meetings; TOC, §1903.158 concerning Per Diem Reimbursement; TOC, §1903.159, concerning Council Duties; and TOC, §1903.251, concerning License Required. This new section is also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

This proposed new section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; THSC, §341.033 and §341.034.

§344.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Air gap--A complete physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.

(2) Atmospheric Vacuum Breaker--An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-siphonage Prevention Assembly.

(3) Backflow prevention--The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.

(4) Backflow prevention assembly--Any assembly used to prevent backflow into a potable water system. The type of assembly used is based on the existing or potential degree of health hazard and backflow condition.

(5) Completion of irrigation system installation--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

(6) Consulting--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

(7) Cross-connection--An actual or potential connection between a potable water source and an irrigation system that may contain contaminates or pollutants or any source of water that has been treated to a lesser degree in the treatment process.

(8) Design--The act of determining the various elements of a landscape irrigation system that will include, but not limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out sprinkler heads, locating system components, conducting hydraulics calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(9) Design pressure--The pressure that is required for an emission device to operate properly. Design pressure is calculated by adding the operating pressure necessary at an emission device to the total of all pressure losses accumulated from an emission device to the water source. Design pressure is also the manufacturer's published minimum operating pressure.

(10) Double Check Valve--An assembly that is composed of two independently acting, approved check valves, including tightly closed resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) Emission device--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) Employed--Engaged or hired to provide consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) Head-to-head spacing--The spacing of spray or rotary heads equal to the manufacturer's published radius of the head.

(14) Health hazard--A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.

(15) Hydraulics--The science of dynamic and static water; the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

(16) Inspector--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.

(17) Installer--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Chapter 30 of this title.

(18) Irrigation inspector--A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Chapter 30 of this title.

(19) Irrigation plan--A scaled drawing of a landscape irrigation system which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system.

(20) Irrigation services--Designing, installing, maintaining, altering, repairing, servicing, permitting, providing consulting services regarding, or connecting an irrigation system to a water supply.

(21) Irrigation system--An assembly of component parts that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location, and/or to reduce dust or control erosion. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) Irrigation technician--A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title.

(23) Irrigation zone--A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

(24) Irrigator--A person who sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title.

(25) Irrigator-in-Charge--The irrigator responsible for all irrigation work performed by an entity, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) Landscape irrigation--The science of applying water to promote or sustain growth of plant material or turf.

(27) License--An occupational license that is issued by the commission under Chapter 30 of this title to an individual that autho-

rizes the individual to engage in an activity that is covered by this chapter.

(28) Mainline--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) Maintenance checklist--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) Major maintenance, alteration, repair, or service--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(31) Master valve--A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

(32) Matched precipitation rate--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.

(33) New installation--An irrigation system installed at a location where one did not previously exist or a system where one or more new zone valves are added to an existing system.

(34) Non-health hazard--A cross-connection or potential cross connection from a landscape irrigation system that involves any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable if introduced into the potable water supply.

(35) Non-potable water--Water that is not suitable for human consumption. Non-potable water sources include, but are not limited to, irrigation systems, lakes, ponds, streams, gray water that is discharged from washing machines, dishwashers or other appliances, water vapor condensate from cooling towers, reclaimed water, and harvested rainwater.

(36) Pass-through contract--A written contract between a licensed irrigator and a third party wherein a licensed irrigator or exempt business owner agrees to perform part or all of the irrigation services relating to an irrigation system.

(37) Potable water--Water that is suitable for human consumption.

(38) Pressure Vacuum Breaker--An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

(39) Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

(40) Records of landscape irrigation activities--The design notes, irrigation plans, contracts, warranty information, invoices, advertisements, copies of permits, and other documents that relate to the installation, maintenance, alteration, repair, or service of a landscape irrigation system.

(41) Reduced Pressure Principle Backflow Prevention Assembly--An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

(42) Static water pressure--The pressure of water when it is not moving.

(43) Supervision--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local or state requirements. Also a licensed installer working under the direction of a licensed irrigator or beginning January 1, 2009, an irrigation technician who is working under the direction of a licensed irrigator to install, maintain, alter, repair or service an irrigation system.

(44) Water conservation--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(45) Zone flow--A measurement, in gallons per minute, of the actual flow of water through a zone valve, calculated by individually opening each zone valve for three minutes and measuring the average gallons per minute of water used for the second and third minute of flow. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(46) Zone valve--An automatic valve that controls a single zone of a landscape irrigation system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. STANDARDS OF CONDUCT FOR IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

30 TAC §§344.20 - 344.24

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning Gen-

eral Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TWC, §49.238, concerning Irrigation Systems. These new sections are also proposed under TLGC, §401.006, concerning Irrigation Systems. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; THSC, §341.033 and §341.034.

§344.20. Purpose of Standards.

(a) The correct practice of irrigation as a science and profession is essential for the protection and conservation of the water resources of the state and should be conducted by individuals who are held to the highest ethical standards. The legislature has vested the commission with the authority and duty to establish and enforce standards of professional conduct and ethics for practitioners in the irrigation industry.

(b) Every applicant for an irrigator, installer, irrigation technician, or irrigation inspector license must become fully informed of the obligations and responsibilities inherent in the practice of irrigation as outlined by these standards of conduct. Each licensed irrigator, installer, irrigation technician, or irrigation inspector is deemed to have notice of these standards of conduct and is required to abide by the standards.

§344.21. Intent.

(a) These standards of conduct are established to prescribe responsibility on the part of an irrigator, an installer, an irrigation technician, an irrigation inspector, and a qualifying exempt business owner to aid in governing the irrigation industry.

(b) The commission will determine what actions constitute violations of the standards in accordance with Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7 and institute appropriate disciplinary action, which may lead to monetary penalties or the suspension or revocation of a license in accordance with the applicable state statutes.

§344.22. Proficiency in the Field of Irrigation; Representation of Qualifications.

(a) All irrigators, installers, irrigation technicians, and inspectors shall be knowledgeable of the current industry standards regarding selling, designing, providing consulting services, installing, maintaining, altering, repairing, or servicing irrigation systems, including the connection of such a system to any source of water and water conservation. All irrigators, installers, irrigation technicians, and inspectors shall conform to the current adopted version of these rules and any local rules that do not conflict with these rules, or that are more stringent than these rules, when performing these activities.

(b) All irrigators, installers, irrigation technicians, irrigation inspectors, and exempt business owners shall accurately and truthfully represent to prospective clients their qualifications to perform the services requested and shall not perform services for which they are not qualified by experience, knowledge, or license in the technical field involved.

(c) All irrigators, installers, irrigation technicians, and inspectors shall be knowledgeable of local requirements related to landscape irrigation systems.

§344.23. Irrigation Practice.

False, misleading, or deceptive practices by an irrigator, installer, irrigation technician, or irrigation inspector relating to bidding, advertising, selling, installation, maintenance, alteration, repair, servicing, or inspection of irrigation systems are prohibited.

§344.24. Local Regulation and Inspection.

(a) Where any city, town, county, special purpose district, other political subdivision of the state, or public water supplier requires licensed irrigators, installers, irrigation technicians, or irrigation inspectors to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory the licensed irrigator, installer, irrigation technician, or irrigation inspector must comply with such requirements, ordinances, and regulations.

(b) Any city, town, county, other political subdivision of the state, or public water supplier that is not required to adopt rules or ordinances regulating landscape irrigation may adopt a landscape irrigation program by ordinance or rule and may be responsible for inspection of connections to its public water supply system up to and including the backflow prevention device.

(c) Municipalities with a population of 20,000 or more and a water district that chooses to implement a landscape irrigation program must verify that the irrigator that designs and installs an irrigation system holds a valid irrigator's license and has obtained a permit before installing a system within its territorial limits or if a municipality, its extraterritorial jurisdiction. Inspectors must verify that the design and installation meet the requirements of this chapter and local ordinances or rules that do not conflict with this chapter, or that are more stringent than this chapter.

(d) Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

(e) An inspector may not inspect a landscape irrigation system that is an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002.

(f) An inspector may not inspect an irrigation system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002; or is connected to a groundwater well that is used by the property owner for domestic use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §§344.30 - 344.38

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TWC, 49.238, concerning Irrigation Systems. These new sections are also proposed under TLGC, §401.006, concerning Irrigation Systems. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.30. License Required.

(a) An irrigator is an individual who:

(1) sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system, including the connection of such system to any water supply;

(2) advertises or represents to anyone that the individual can perform any or all of these functions; and

(3) is required to hold a valid irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(b) Through December 31, 2009, an installer is an individual who connects an irrigation system to any water supply.

(c) Beginning January 1, 2009, an irrigation technician is an individual who:

(1) under the supervision of a licensed irrigator connects an irrigation system to a water supply;

(2) under the supervision of a licensed irrigator installs, maintains, alters, repairs, or services a landscape irrigation system;

(3) represents to anyone that the individual can perform any or all of these functions; and

(4) is required to hold a valid irrigation technician license issued under Chapter 30 of this title.

(d) All irrigators, installers, and irrigation technicians shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

(e) An individual who inspects irrigation systems and enforces a municipality's landscape irrigation ordinance must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or

(2) hold a valid plumbing inspector license.

(f) An individual who inspects irrigation systems and enforces a water district's rules related to landscape irrigation systems must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title;

(2) hold a valid plumbing inspector license;

(3) be the district's operator; or

(4) be another regulatory authority with jurisdiction over landscape irrigation.

(g) An inspector shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

§344.31. Exemption for Business Owner Who Provides Irrigation Services.

Under Chapter 30 of this title (relating to Occupational Licenses and Registrations), a business owner who employs a licensed irrigator as an irrigator-in-charge to provide consulting services or to supervise or conduct the exempt business's operations relating to the design, installation, maintenance, alteration, repairing, and servicing of irrigation systems is exempt from the licensing requirements of Texas Occupations Code, Chapter 1903.

§344.32. Responsibilities of a Business Owner Who Provides Irrigation Services.

An exempt owner who provides landscape irrigation services shall ensure that all irrigation services are supervised by a licensed irrigator, according to the requirements of this subchapter. An exempt business owner who engages in landscape irrigation is responsible for verifying the validity of the license belonging to all irrigators, installers, and irrigation technicians performing irrigation services for the business. An exempt business owner who engages in landscape irrigation is responsible for designating an irrigator-in-charge.

§344.33. Display of License.

(a) Irrigators, installers, and irrigation technicians shall prominently display their license certificate at the place of irrigation business or employment and shall present their license upon request by any regulatory authority, irrigation system's owner, or prospective owner.

(b) Irrigation inspectors shall present their license, when requested by any entity that is regulated under this chapter, and when

that request is made while an irrigation inspector is conducting business.

§344.34. Use of License.

(a) No one other than the irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued may use or attempt to use the license, which includes the license number.

(b) An individual who uses or attempts to use the license or license number of someone else who is a licensed irrigator, licensed installer, licensed irrigation technician, or licensed irrigation inspector is in violation of Texas Occupations Code, Chapter 1903, and this chapter.

(c) An irrigator's license or license number may be used at only one entity as the irrigator-in-charge. An irrigator may work for other entities, but not as the irrigator-in-charge.

(d) It is a violation of this chapter for an irrigator, installer, irrigation technician or irrigation inspector to authorize or allow another person or entity to use the irrigator's, installer's, irrigation technician's, or irrigation inspector's license or license number in a manner inconsistent with this chapter.

§344.35. Duties and Responsibilities of Irrigators.

(a) An irrigator shall comply with the rules contained in this chapter when performing any or all of the functions described in this section.

(b) An irrigator who performs work for an entity or for an exempt business owner who performs or offers to perform irrigation services shall be knowledgeable of and responsible for all permits, contracts, agreements, advertising, and other irrigation services secured and performed using the irrigator's license.

(c) A licensed irrigator who is employed by an exempt business owner as defined by §344.31 of this title (relating to Exemption for Business Owner Who Provides Irrigation Services) shall supervise all irrigation services of the business, in accordance with this chapter.

(d) A licensed irrigator is responsible for:

(1) using the stamp or rubber seal in accordance with this chapter;

(2) obtaining all permits and inspections required to install an irrigation system;

(3) complying with local regulations;

(4) determining the appropriate backflow prevention method for each irrigation system installation and installing the backflow prevention device correctly;

(5) maintaining landscape irrigation systems records;

(6) conserving water;

(7) developing and following irrigation plan for each new irrigation system;

(8) designing and installing an irrigation system that complies with the requirements of this chapter;

(9) providing on-site supervision of the installation of an irrigation system beginning January 1, 2010;

(10) providing supervision to an irrigation technician while connecting an irrigation system to a water supply; installing, maintaining, altering, repairing, or servicing an irrigation system;

(11) providing supervision to an installer connecting an irrigation system through December 31, 2009;

(12) completing the irrigation system including the final "walk through," completing the Maintenance Checklist, placing a permanent sticker on the controller, and providing a copy of the design plan;

(13) selling, consulting, performing maintenance, alteration, repair, and service of irrigation systems that complies with the requirements of this chapter; and

(14) providing advertisements, contracts, and warranties that comply with the requirements of this chapter.

§344.36. Duties and Responsibilities of Installers and Irrigation Technicians.

(a) A licensed installer may connect an irrigation system to a water supply through December 31, 2009. This includes installing an approved backflow prevention method pursuant to §344.50 of this title (relating to Backflow Prevention Methods) when connecting an irrigation system to a potable water supply. Beginning January 1, 2009, a licensed irrigation technician may connect an irrigation system to a water supply, including installing an approved backflow prevention method pursuant to §344.50 of this title and may maintain, alter, repair, service, or direct the installation of irrigation systems under the supervision of an irrigator.

(b) If an installer or irrigation technician connects an irrigation system to a potable water supply, the connection and installation of the backflow prevention method must be as indicated on the site irrigation plan or as directed by the licensed irrigator and documented on the site irrigation plan.

(c) Through December 31, 2009, an installer is responsible for the connection of an irrigation system to a water supply under the supervision of a licensed irrigator.

(d) Beginning January 1, 2009, an irrigation technician, under the supervision of a licensed irrigator, is responsible for:

(1) connecting an irrigation system to a water supply; and

(2) providing on-site supervision of the installation, maintenance, alteration, repair, service of an irrigation system.

§344.37. Duties and Responsibilities of Irrigation Inspectors.

(a) A licensed irrigation inspector shall enforce the applicable irrigation rules or ordinance of the employing governmental entity.

(b) A licensed irrigation inspector, licensed plumbing inspector, a water district's operator or other governmental entity shall be responsible for:

(1) verifying that the appropriate permits have been obtained for an irrigation system and that the irrigator and installer or irrigation technician, if applicable, are licensed;

(2) inspecting the irrigation system;

(3) determining that the irrigation system complies with the requirements of this chapter;

(4) determining that the appropriate backflow prevention device was installed, tested, and test results provided to the water purveyor;

(5) investigating complaints related to irrigation system installation, maintenance, alteration, repairs, or service of an irrigation system and advertisement of irrigation services; and

(6) maintaining records according to this chapter.

§344.38. Irrigator, Installer, and Irrigation Technician Records.

Upon the licensed irrigator obtaining the seal or rubber stamp, in accordance with this chapter, an impression of the seal or rubber stamp

will be made on letterhead, or other business stationary, and maintained on file for review by the commission. Archival copies of all records given to the irrigation system's owner or owner's representative shall be maintained by the irrigator. Records will be maintained by the irrigator for a period of three years from the date installation, maintenance, alteration, repair or service was completed or advertisement published. Irrigators, installers, and irrigation technicians shall make all records of landscape irrigation services available within two business days of any request made by authorized representatives of the commission or the local regulatory authority with jurisdiction over landscape irrigation issues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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For further information, please call: (512) 239-6091

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SUBCHAPTER D. LICENSED IRRIGATOR SEAL

30 TAC §§344.40 - 344.43

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, and 37.001 - 37.015; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.40. Seal Required.

Each irrigator, upon being licensed with the commission, shall obtain a seal, as described in §344.41 of this title (relating to Seal Design). Licensed irrigators shall not engage in any landscape irrigation services without physical possession of the seal and the license. The irrigator is responsible for the security of the seal.

§344.41. Seal Design.

(a) The required seal must be:

(1) circular; and

(2) not less than 1-1/2 inches in diameter.

(b) The required seal must display:

(1) the words "State of Texas" at the top between the knurled circles;

(2) the words "Licensed Irrigator" at the bottom; and

(3) the irrigator's name and license number, excluding leading zeros, horizontally in the circular field.

§344.42. Seal Display.

(a) On every document requiring an irrigator's seal, the seal shall be clearly visible and legible on the original document and all copies or reproductions of the original document.

(b) An irrigator may use an electronic or other format seal and signature if the seal, signature, and date are clearly visible and legible on the original document and all copies or reproductions of the original document.

§344.43. Seal Use.

(a) Irrigators shall:

(1) sign their legal name;

(2) affix the seal above the irrigator's signature; and

(3) include the date of signing (month, day, and year) of each document to which the seal is affixed.

(b) The presence of the irrigator's seal displayed above the irrigator's signature and date on any document constitutes the acceptance of all professional responsibility for the document and the irrigation services performed in accordance with that document and certifies that the system was properly installed in accordance with state and local statutes, rules, and ordinances.

(c) The irrigator will maintain for three years a copy of each document bearing the irrigator's seal.

(d) Once a document containing a seal is issued, the seal may not be altered.

(e) Irrigators shall not use or authorize the use of a seal on any design or specification created by another irrigator unless the irrigator:

(1) Reviews and makes changes to adapt the design or specification to the specific site conditions and to address state and local requirements; and

(2) Accepts full responsibility for any alterations to the design or specification and any downstream consequences.

(f) If an irrigator prepares a portion of a design or specification, that portion of the design or specification prepared by the irrigator, or under the irrigator's supervision and seal, should be clearly identified.

(g) Irrigators shall sign, seal and date the irrigation plan and specifications, contract, addenda or change orders, warranty, and the maintenance checklist.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. BACKFLOW PREVENTION AND CROSS-CONNECTIONS

30 TAC §§344.50 - 344.52

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TWC, §49.238, concerning Irrigation Systems. These new sections are also proposed under TLGC, §401.006, concerning Irrigation Systems. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.50. Backflow Prevention Methods.

(a) Any irrigation system that is connected to a public or private potable water supply must be connected through a commission-approved backflow prevention method. The backflow prevention device must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or the Uniform Plumbing Code; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.

(b) If conditions that present a health hazard exist, one of the following methods must be used to prevent backflow;

(1) An air gap may be used if:

(A) there is an unobstructed physical separation; and

(B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.

(2) Reduced pressure principle backflow prevention assemblies may be used if:

(A) the device is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

(B) drainage is provided for any water that may be discharged through the assembly relief valve.

(3) Pressure vacuum breakers may be used if:

(A) no back-pressure condition will occur; and

(B) the device is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Atmospheric vacuum breakers may be used if:

(A) no back-pressure will be present;

(B) there are no shutoff valves downstream from the atmospheric vacuum breaker;

(C) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;

(D) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and

(E) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.

(c) Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.

(d) If there are no conditions that present a health hazard double check valve backflow prevention assemblies may be used to prevent backflow if:

(1) a local regulatory authority does not prohibit the use of a double check valve;

(2) backpressure caused by an elevation of pressure in the discharge piping by pump or elevation of piping above the supply pressure which could cause a reversal of the normal flow of water or backsiphonage conditions caused by a reduced or negative pressure in the irrigation system exist; and

(3) test cocks are used for testing only.

(e) If a double check valve is installed below ground:

(1) test cocks must be plugged, except when the double check valve is being tested;

(2) test cock plugs must be threaded, water-tight, and made of non-ferrous material;

(3) a y-type strainer is installed on the discharge side of the double check valve;

(4) there must be a clearance between any fill material and the bottom of the double check valve to allow space for testing and repair; and

(5) there must be space on the side of the double check valve to test and repair the double check valve.

§344.51. Specific Conditions and Cross-Connection Control.

(a) Before any chemical is added to an irrigation system connected to any potable water supply, the irrigation system must be connected through a reduced pressure principle backflow prevention assembly.

(b) An irrigation system connected to a potable water source may not be interconnected with a non-potable water source.

(c) Irrigation system components with chemical additives connected to any potable water supply must be connected through a reduced pressure principle backflow device.

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of this title (relating to On-Site Sewage Facilities), then:

(1) all irrigation piping and valves must meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in §285.91(10) of this title (relating to Minimum Required Separation Distances for On-Site Sewage Facilities);

(2) any connections using a private or public potable water source must be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in §344.50 of this title (relating to Backflow Prevention Methods); and

(3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system must be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

§344.52. Installation of Backflow Prevention Device.

(a) If an irrigation system is connected to a potable water supply and requires major maintenance, alteration, repair, or service, the system must be connected to the potable water supply through an approved, properly installed backflow prevention method as defined in this title before any major maintenance, alteration, repair, or service is performed.

(b) If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow assembly and includes an automatic master valve on the system, the automatic master valve must be installed on the discharge side of the backflow prevention assembly.

(c) The irrigator shall ensure the backflow prevention device is tested prior to being placed in service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within 10 business days of testing of the backflow prevention device.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. STANDARDS FOR DESIGNING, INSTALLING, AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

30 TAC §§344.60 - 344.65

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TWC, §49.238, concerning Irrigation Systems. These new sections are also proposed under TLGC, §401.006, concerning Irrigation Systems. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.60. Water Conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in §344.1(43) of this title (relating to Definitions).

§344.61. Minimum Standards for the Design of the Irrigation Plan.

(a) An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. A paper copy of this plan must be on the job site at all times during the installation of the irrigation system. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

(1) diminish the operational integrity of the irrigation system;

(2) violate any requirements of this chapter; and

(3) go unnoted in red on the irrigation plan.

(b) The irrigation plan must include complete coverage of the area to be irrigated. If a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan.

(c) All irrigation plans used for construction must be drawn to scale no smaller than one inch equal to thirty feet and include, at a minimum, the following information:

(1) the irrigator's seal, signature, and date of signing;

(2) all major physical features and the boundaries of the areas to be watered;

(3) a North arrow;

(4) a legend;

(5) the zone flow measurement for each zone;

(6) location and type of each:

(A) automatic controller;

(B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);

(7) location, type, and size of each:

(A) water source, such as, but not limited to a water meter and point(s) of connection;

(B) backflow prevention device;

(C) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;

(D) valve, including, but not limited to, zone valves, master valves, and isolation valves;

(E) pressure regulation component; and

(F) main line and lateral piping.

§344.62. Minimum Design and Installation Requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure.

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than five feet in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.

(c) Water pressure. Emission devices must be installed to operate at the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe.

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

(h) Master valve. If required, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement.

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which are exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a covered purple valve box and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) Beginning January 1, 2010, either a licensed irrigator or a licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

§344.63. Completion of Irrigation System Installation.

Upon completion of the irrigation system, the irrigator who provided supervision for the on site installation shall be required to complete four items:

(1) a final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The Maintenance Checklist on which the irrigator shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. A duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the Maintenance Checklist shall include but are not limited to:

(A) the manufacturer's manual for the automatic controller;

(B) a seasonal (spring, summer, fall, winter) watering schedule based on monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

(C) a list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and

(D) the statement, "This irrigation system has been designed and installed in accordance with all applicable state and local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator. The information contained on the sticker must be printed with waterproof ink; and

(4) The design plan indicating the actual installation of the system.

§344.64. Maintenance, Alteration, Repair, or Service of Irrigation Systems.

(a) The irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.

(b) All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be returned to the original grade with compacted select backfill.

(c) Colored PVC pipe primer solvent must be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system.

(d) When maintenance, alteration, repair or service of an irrigation system involves work at the water meter or backflow prevention device, an isolation valve shall be installed, if an isolation valve is not present.

§344.65. Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

(1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;

(2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;

(3) the irrigation system is not connected to the potable water supply;

(4) the irrigation system is installed using purple components;

(5) the domestic potable water line is connected using an air gap or a reduced pressure principle backflow prevention device, in accordance with §290.47(i) of this title (relating to Appendices);

(6) a minimum of an eight inch by eight inch sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER - DO NOT DRINK"; and

(7) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the water purveyor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. ADVERTISING, CONTRACT, AND WARRANTY

30 TAC §§344.70 - 344.72

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105, concerning General Policy. These new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. These new sections are also proposed under TWC, §49.238, concerning Irrigation Systems. These new sections are also proposed under TLGC, §401.006, concerning Irrigation Systems. These new sections are also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; and TOC, §1903.251, concerning License Required. Finally, these new sections are also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, and 1903.251; and THSC, §341.033 and §341.034.

§344.70. Advertisement.

(a) All vehicles and trailers used in the performance of irrigation services must display the irrigator's license number in the form of "LI_____" in a contrasting color of block letters at least two inches high, on both sides of the vehicle and trailer.

(b) All forms of written and electronic advertisements for irrigation services must display the irrigator's license number in the form of "LI_____." Any form of advertisement, including business cards and estimates which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number.

(c) The name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign and displayed in plain view at the permanent structure where irrigation business is primarily conducted and irrigation records are kept.

§344.71. Contracts.

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us."

(c) An individual who agrees by contract to provide irrigation services as defined in §344.30 of this title (relating to License Required) shall hold an irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in §344.1(36) of this title (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. It shall be a violation of this chapter for anyone other than the licensed irrigator or those individuals exempted by Texas Occupations Code, §1903.002(b)(1), (2) and (10) to receive monetary compensation for irrigation services provided through a pass-through contract. If an irrigator installs a system pursuant to a pass-through contract, the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

§344.72. Warranties.

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, license number, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written document that identifies the materials and labor furnished in the maintenance, alteration, repair, or service and shall warrant in writing the materials and labor. The irrigator shall abide by the terms of the warranty. The warranty document must include the irrigator's name, license number, and business contact information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800229
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-6091

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SUBCHAPTER H. IRRIGATOR ADVISORY COUNCIL

30 TAC §344.80

STATUTORY AUTHORITY

This new section is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces. This new section is also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract, respectively. This new section is also proposed under TWC, §49.238, concerning Irrigation Systems. This new section is also proposed under TLGC, §401.006, concerning Irrigation Systems. This new section is also proposed under TOC, §1903.001, concerning Definitions; TOC, §1903.002, concerning Exemptions; TOC, §1903.053, concerning Standards; TOC, §1903.151 concerning Council Membership; TOC, §1903.152, concerning Eligibility of Public Members; TOC, §1903.155, concerning Presiding Officer; TOC, §1903.157, concerning Meetings; TOC, §1903.158 concerning Per Diem Reimbursement; TOC, §1903.159, concerning Council Duties; and TOC, §1903.251, concerning License Required. Finally, this new section is also proposed under THSC, §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

This proposed new section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; TLGC, §401.006; TOC, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; and THSC, §341.033 and §341.034.

§344.80. Irrigator Advisory Council.

(a) The Irrigator Advisory Council is composed of nine members that are appointed by the commission. Appointments to the council will be made without regard to race, creed, sex, religion, or national origin of the appointees. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to landscape irrigation. The council has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Six members of the council must be licensed irrigators who are residents of the State of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques.

(c) Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

(d) A council member or an employee of the commission that is associated with the administration of this section may not be an officer, employee, or paid consultant of a trade association in the irrigation industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the irrigation industry.

(e) A person who, because of that person's activities on behalf of a trade or professional association in the irrigation industry, is required to register as a lobbyist under Texas Government Code, Chapter 305, may not serve as a member of the council.

(f) It is grounds for removal from the council by the commission if a member:

(1) does not meet, at the time of the appointment, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;

(2) does not maintain, during service on the council, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;

(3) violates a prohibition prescribed by subsection (d) or (e) of this section; or

(4) misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period.

(g) The members of the council serve six-year terms, with the terms expiring February 1 of each odd-numbered year.

(h) A member of the council is entitled to per diem as appropriated by the Texas Legislature for each day that the member engages in the business of the council. A member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as provided for in the General Appropriations Act.

(i) The council shall hold meetings at the call of the commission or chairman.

(j) A majority of the council constitutes a quorum for conducting business.

(k) The council will elect a chairman by a majority vote.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800230
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 239-6091

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.3

The Texas County and District Retirement System proposes an amendment to §105.3, concerning the granting of credited service in the system for qualified military service of the member for other than qualified military service under the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 U.S.C. §§4301 et seq.) granted under §105.4. The proposed amendment deletes the limitation on the accumulation of credited service under this section on a combined basis with qualified military service credited under the USERRA. The proposed rule clarifies that the categories of qualified military eligible for crediting are separate and that each category is subject to a 60 month maximum independent of the other.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule except as required under federal law.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the proper crediting of military service under the qualified military service option adopted by subdivisions and under the USERRA as required by federal law. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §843.502(b), which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules that modify the terms of Government Code, §843.502, for the purpose of compliance with the USERRA.

The Government Code, §843.502 is affected by this proposed rule.

§105.3. Optional Credited Service for Active Duty Qualified Military Service.

(a) In this section:

(1) The term "credited service" means membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service established after December 31, 1999.

(2) The term "eligible member" means a member of an eligible subdivision who has established[~~:~~] credited service in the retirement system for at least the minimum period required to receive a service retirement annuity from the subdivision at age 60, who has performed active duty qualified military service,[~~:~~] and who has been released from military duty under honorable conditions.

(3) The term "eligible subdivision" means a subdivision whose governing board has adopted the optional authorization for the establishment of credited service in the retirement system for qualified military service.

(4) The term "qualified military service" means active duty service in the uniformed services as defined in 38 U.S.C. §4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the TCDRS Act or the Uniformed Services Employment and Reemployment Rights Act of 1994, and that service, [~~which is~~] credited by another retirement system, that is recognized by this system under the proportionate retirement program [~~established or governed by state law~~]. A member may not be credited with [~~receive~~] more than one month of [~~credited~~] service for any calendar month.

(b) Subject to the limitations in subsection (a) of this section, an [~~An~~] eligible member may receive one month of credited service in the retirement system for each month of qualified military service performed while on active duty. An [~~Except as required under the USERRA, an~~] eligible member may not establish [~~accumulate~~] more than [~~a combined total of~~] 60 months of credited service in the retirement system for qualified military service under this section [~~and §105.4~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2008.

TRD-200800207
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Proposed date of adoption: March 6, 2008
For further information, please call: (512) 328-8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER H. PROFESSIONAL CONDUCT

37 TAC §1.114

The Texas Department of Public Safety proposes amendments to §1.114, concerning Major Infraction Applicable to Any Member. Amendments reformat the section and are necessary in order to create an ethics policy that is consistent with the recently adopted Attorney General model ethics policy promulgated under Government Code, §572.051(d).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no

anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be assurance to the public that proper action will be taken against any member of the department committing a major infraction which is not considered professional conduct.

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Duncan Fox, Deputy General Counsel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§1.114. Major Infraction Applicable to Any Employee [~~Member~~].

~~[(a) In compliance with the mandate of the legislature in House Bill 1938, 70th Legislature, 1987, Chapter 361, the Public Safety Commission adopted the rule set out in subsection (b) of this section, which said rule shall be applicable in all cases of the discharge, suspension, or demotion of any member of the Department.]~~

(a) [~~(b)~~] Any of the major infractions listed as follows may be deemed sufficient cause for the discharge, suspension, demotion, or removal of any employee [~~member~~] of the department of public safety:

(1) failure to abide by the Code and Canons of Ethics or the standards of ethical conduct for state employees;

(2) violation of one or more of the 10 general orders;

(3) violation of any rule, order, requirement, or failure to follow instructions contained in department manuals;

(4) willful disobedience to any legal order properly issued to him by any superior officer to the department;

(5) willful neglect of duty;

(6) making public any investigation or proposed movement or business of the department to any unauthorized person;

(7) unnecessary and unwarranted violence to a citizen or person under arrest;

(8) use of indecent, profane, or harsh language while on duty or in uniform;

(9) unauthorized attendance while on duty at official legislative sessions;

(10) willful or inexcusable destruction or loss of state property;

(11) violations of law which are willful or inexcusable;

(12) acceptance of fees, gifts, or money contrary to the rules of the department and/or laws of the state;

(13) any act on or off duty which reflects discredit to the department of public safety; or

(14) racial profiling.

(b) [~~(c)~~] The terms contained herein are those which appear in §§1.111 - 1.113 of this title (relating to Professional Conduct) and are intended by the public safety commission to reflect and refer to those provisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800269
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 2, 2008
For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.5

Proposed repeal of §391.5, published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4323), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 15, 2008.

TRD-200800160

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22 TAC §391.5

Proposed new §391.5, published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4323), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 15, 2008.

TRD-200800161

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

28 TAC §7.402

The Commissioner of Insurance adopts new §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations for year-end 2007. The section is adopted without changes to the proposed text published in the November 30, 2007 issue of the *Texas Register* (32 TexReg 8627).

REASONED JUSTIFICATION. The new section, which is necessary to regulate the 2007 risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs), adopts by reference the 2007 National Association of Insurance Commissioners (NAIC) risk-based capital formulas to be used for year-end 2007, including the 2007 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2007 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2007 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2007 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies. The adopted section applies to property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium companies that do business in other states, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank. These insurers and HMOs are referred to collectively as "carriers" in this adoption. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The adopted section is necessary to provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The adopted section also provides for specific actions by the Commissioner or the reporting entity when the total adjusted capital of the reporting entity falls to certain levels specified in the section.

HOW THE SECTION WILL FUNCTION. Adopted §7.402(a) explains the purpose of the section. Adopted §7.402(b) specifies the scope of the section. Adopted §7.402(c) specifies definitions of certain terms when used in the section. Adopted §7.402(d) adopts the 2007 risk-based capital formulas by reference. Adopted §7.402(e) describes the filing requirements for the various types of carriers. Adopted §7.402(f) provides that in the event of a conflict between the Insurance Code, any rule of the Department or any specific requirement of the adopted section, and the risk-based capital formula and/or the risk-based capital instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. Adopted §7.402(g) specifies the remedial actions that the Commissioner of Insurance may take depending on the results computed by the risk-based capital formula, including the new subsection (g)(6) requirement that subjects property and casualty insurers to a trend test under certain specified circumstances. Adopted §7.402(g)(6) imposes a new substantive requirement for year-end 2007 that subjects property and casualty insurers to a trend test if total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent, and that if the result of the trend test as determined by the formula is "YES", the property and casualty insurers will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. This requirement will allow early identification of insurers that are likely to reach a company action level in the following year. By triggering a company action level sooner, insurers can plan better for their capital needs. Adopted §7.402(h) prohibits announcements that would be misleading. Adopted §7.402(i) prohibits the use of the risk-based capital instructions and any related filings for ratemaking. Adopted §7.402(j) mandates that the requirements of the adopted new section shall not reduce the amount of capital and surplus otherwise required by the provisions of the Insurance Code, Department rules, or by the authority of the Commissioner of Insurance as provided by law.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code Chapters 404 and 441 and §§441.051, 541.401, 822.210, 841.205, 884.206, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies and in §441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Under §441.005, the Commissioner may adopt reasonable rules as

necessary to implement and supplement the purposes of Chapter 441. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Sections 822.210, 841.205, and 884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800253
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 7, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2815

The Commissioner of Insurance adopts amendments to §21.2815, concerning failure to meet the statutory health care clean claims payment period for health care clean claims. The amendments are adopted with nonsubstantive changes to the proposed text published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8679). Pursuant to the request of the Texas Register staff, the adoption order also includes changes to the text in §21.2815(a) - (c) and (e) relating to the format of numbers and percentages, which were not a part of the published proposal, for consistency with the nonsubstantive changes proposed in subsection (d).

REASONED JUSTIFICATION. The amendments are necessary to implement SB 1884, enacted by the 80th Legislature, Regular Session, and effective September 1, 2007. SB 1884 amends the Insurance Code §843.342(g) and (h), and §1301.137(g) and (h).

The Department posted an informal working draft of the proposed amendments on the Department's internet website from September 18 to September 26, 2007, and invited public input. The Department received no comments on the informal working draft proposal. In accordance with the Insurance Code §1212.002(b), the Department also discussed the informal working draft of the proposed amendments at the September 20, 2007 meeting of the Technical Advisory Committee on Claims Processing (TACCP), and received favorable comment from TACCP members. The TACCP is appointed pursuant to the Insurance Code Chapter 1212. Section 1212.002(b) requires the Commissioner to consult the TACCP before adopting any rule related to the technical aspects of the coding of health care services and claims development, submission, processing, adjudication, and payment by insurers and health maintenance organizations (HMO's) for medical care and health care services provided to patients. The Department formally proposed the amendments in the November 30, 2007 issue of the *Texas Register* (32 TexReg 8679). The Department received no comments and no requests for a hearing on the proposal.

SB 1884 revises the basis for calculating the "underpaid amount" component of the formula for determining penalty amounts for certain underpaid claims in the Insurance Code §843.342(g) and §1301.137(g). Prior to the enactment of SB 1884, the underpayment penalty formula was calculated on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to the billed charges as submitted on the claim. The formula resulted in a penalty that was disproportionate to the underpayment in certain situations. Under SB 1884, the amended formula is calculated on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate.

Accordingly, this adoption order amends the basis for calculating the "underpaid amount" component of the formula for determining penalty amounts for certain underpaid claims in §21.2815(d) for consistency with the SB 1884 amendments. This adoption order also amends the calculation example in §21.2815(d) for consistency with the amended formula.

SB 1884 also revises certain time frames that affect an HMO's or preferred provider benefit plan (PPBP) carrier's liability for underpaid claim penalties. Prior to SB 1884, an HMO or PPBP carrier was not liable for penalties for an underpaid claim if: (i) the claim was paid in accordance with the subchapter; (ii) the physician or provider notified the HMO or insurer of the underpayment after the 180th day after the date the underpayment was received; and (iii) the HMO or insurer paid the balance of the claim on or before the 45th day after the date the HMO or insurer received the notice. Under the Insurance Code §843.342(h)(2) and §1301.137(h)(2), as amended by SB 1884, an HMO or PPBP carrier is not liable for penalties for an underpaid claim if: (i) the claim is paid in accordance with the subchapter; (ii) the physician or provider notifies the HMO or insurer of the underpayment after the 270th day after the date the underpayment was received; and (iii) the HMO or insurer pays the balance of the claim on or before the 30th day after the date the HMO or insurer receives the notice.

Accordingly, this adoption order amends the time frames in §21.2815(f)(2) for consistency with the SB 1884 changes. In addition to amendments to §21.2815(d) and (f) to implement SB

1884, this adoption order makes nonsubstantive changes to the format of numbers and percentages within §21.2815(a) - (e) for purposes of conformity to agency style and internal consistency. However, these nonsubstantive changes do not introduce new subject matter or affect persons in addition to those subject to the proposal as published.

HOW THE SECTION WILL FUNCTION. The adopted amendments to §21.2815(d) revise the "underpaid amount" component of the formula for calculating the penalty amounts for certain underpaid claims, and also amend the calculation example. The adopted amendments to §21.2815(f) revise the time frames that affect an HMO's or PPBP carrier's liability for underpaid claim penalties. Additionally, adopted amendments to §21.2815(a) - (e) make nonsubstantive changes to the format of numbers and percentages for purposes of conformity to agency style and internal consistency.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§843.342, 1301.137, 1212.002, 843.151, 1301.007, and 36.001. Section 843.342(g) and §1301.137(g) state that, for the purposes of the Insurance Code §843.342(d) and (e), and §1301.137(d) and (e), the underpaid amount is calculated on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate. Section 843.342(h)(2) and §1301.137(h)(2) state that an HMO or insurer is not liable for a penalty under §843.342 or §1301.137 if the claim was paid in accordance with Chapter 843, Subchapter J or Chapter 1301, Subchapter C, but for less than the contracted rate, and: (A) the physician or preferred (provider) notifies the HMO or insurer of the underpayment after the 270th day after the date the underpayment was received; and (B) the HMO or insurer pays the balance of the claim on or before the 30th day after the date the HMO or insurer receives the notice. Section 1212.002(b) requires the Commissioner to consult the Technical Advisory Committee on Claims Processing, appointed under the Insurance Code Chapter 1212, before adopting any rule related to the technical aspects of the coding of health care services and claims development, submission, processing, adjudication, and payment by insurers and health maintenance organizations (HMO's) for medical care and health care services provided to patients. Section 843.151 authorizes the Commissioner to adopt reasonable rules as necessary and proper to implement the Insurance Code Chapter 843. Section 1301.007 authorizes the Commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

(a) An HMO or preferred provider carrier that determines under §21.2807 of this title (relating to Effect of Filing a Clean Claim) that a claim is payable shall:

(1) if the claim is paid on or before the 45th day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty in the amount of the lesser of:

(A) 50 percent of the difference between the billed charges and the contracted rate; or

(B) $100,000.

(2) If the claim is paid on or after the 46th day and before the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty in the amount of the lesser of:

(A) 100 percent of the difference between the billed charges and the contracted rate; or

(B) $200,000.

(3) If the claim is paid on or after the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty computed under paragraph (2) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the HMO or preferred provider carrier was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(b) The following examples demonstrate how to calculate penalty amounts under subsection (a) of this section:

(1) If the contracted rate, including any patient financial responsibility, is $10,000 and the billed charges are $15,000, and the HMO or preferred provider carrier pays the claim on or before the 45th day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the amount owed on the claim, 50 percent of the difference between the billed charges ($15,000) and the contracted rate ($10,000) or $2,500. The basis for the penalty is the difference between the total contracted amount, including any patient financial responsibility, and the provider's billed charges;

(2) if the claim is paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the contracted rate owed on the claim, 100 percent of the difference between the billed charges and the contracted rate or $5,000; and

(3) if the claim is paid on or after the 91st day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the contracted rate owed on the claim, $5,000, plus 18 percent annual interest on the $5,000 penalty amount accruing from the statutory claim payment deadline.

(c) Except as provided by this section, an HMO or preferred provider carrier that determines under §21.2807 of this title that a claim is payable, pays only a portion of the amount of the claim on or before the end of the applicable 21-, 30- or 45-day statutory claims payment period, and pays the balance of the contracted rate owed for the claim after that date shall:

(1) If the balance of the claim is paid on or before the 45th day after the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

(A) 50 percent of the underpaid amount; or

(B) $100,000.

(2) If the balance of the claim is paid on or after the 46th day and before the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider,

in addition to the contracted amount owed, a penalty in the amount of the lesser of:

(A) 100 percent of the underpaid amount; or

(B) $200,000.

(3) If the balance of the claim is paid on or after the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted amount owed, a penalty computed under paragraph (2) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the HMO or preferred provider carrier was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) For the purposes of subsection (c) of this section, the underpaid amount is calculated on the ratio of the balance owed by the carrier to the total contracted rate, including any patient financial responsibility, as applied to an amount equal to the billed charges minus the contracted rate. For example, a claim for a contracted rate of $1,000 and billed charges of $1,500 is initially underpaid at $600, with the insured owing $200 and the HMO or preferred provider carrier owing a balance of $200. The HMO or preferred provider carrier pays the $200 balance on the 30th day after the end of the applicable statutory claims payment period. The amount the HMO or preferred provider carrier initially underpaid, $200, is 20 percent of the contracted rate. To determine the penalty, the HMO or preferred provider carrier must calculate 20 percent of the billed charges minus the contracted rate, which is $100. This amount represents the underpaid amount for subsection (c)(1) of this section. Therefore, the HMO or preferred provider carrier must pay, as a penalty, 50 percent of $100, or $50.

(e) For purposes of calculating a penalty when an HMO or preferred provider carrier is a secondary carrier for a claim, the contracted rate and billed charges must be reduced in accordance with the percentage of the entire claim that is owed by the secondary carrier. The following example illustrates this method: Carrier A pays 80 percent of a claim for a contracted rate of $1,000 and billed charges of $1,500, leaving $200 unpaid as the patient's financial responsibility. The patient has coverage through Carrier B that is secondary and Carrier B will owe the $200 balance pursuant to the coordination of benefits provision of Carrier B's policy. If Carrier B fails to pay the $200 within the applicable statutory claims payment period, Carrier B will pay a penalty based on the percentage of the claim that it owed. The contracted rate for Carrier B will therefore be $200 (20 percent of Carrier A's $1,000 contracted rate), and the billed charges will be $300 (20 percent of $1,500). Although Carrier B may have a contracted rate with the provider that is different than Carrier A's contracted rate, it is Carrier A's contracted rate that establishes the entire claim amount for the purpose of calculating Carrier B's penalty.

(f) An HMO or preferred provider carrier is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with the applicable statutory claims payment period is a result of a catastrophic event that the HMO or preferred provider carrier certified according to the provisions of §21.2819 of this title (relating to Catastrophic Event); or

(2) if the claim was paid in accordance with §21.2807 of this title, but for less than the contracted rate, and:

(A) the preferred provider notifies the HMO or preferred provider carrier of the underpayment after the 270th day after the date the underpayment was received; and

(B) the HMO or preferred provider carrier pays the balance of the claim on or before the 30th day after the date the insurer receives the notice of underpayment.

(g) Subsection (f) of this section does not relieve the HMO or preferred provider carrier of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(h) An HMO or preferred provider carrier that pays a penalty under this section shall clearly indicate on the explanation of payment the amount of the contracted rate paid, the amount of the billed charges as submitted by the physician or provider and the amount paid as a penalty. A non-electronic explanation of payment complies with this requirement if it clearly and prominently identifies the notice of the penalty amount.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: November 30, 2007
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT

SUBCHAPTER B. RETURN TO WORK

28 TAC §137.41, §137.49

The Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance (Department), Division of Workers' Compensation ("Division") adopts an amendment to §137.41 and adopts new §137.49, concerning the optional preauthorization plan. This amendment and new section is adopted without changes to the proposal published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9095).

The adopted amendment and new section is necessary to implement amendments enacted under House Bill (HB) 886, by the 80th Legislature, Regular Session, to Labor Code §413.022 (relating to return-to-work pilot program for small employers; fund).

Labor Code §413.022, enacted by the 79th Legislature, Regular Session, establishes the workers' compensation return-to-work account, a special account in the general revenue fund funded by administrative penalties collected by the Division, and requires the Commissioner to establish by rule a return-to-work pilot program for small employers ("pilot program") designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury. The pilot program reimburses from the return-to-work account an eligible employer for expenses incurred by the employer in making workplace modifications and changes necessary to accommodate an injured em-

ployee's return to modified or alternative work. Reimbursement under this pilot program may not exceed $2,500. In accordance with Labor Code §413.022, the Commissioner adopted 28 TAC §§137.41 - 137.48. These sections establish and set forth the terms, conditions, and requirements for the pilot program.

HB 886 described above amends Labor Code §413.022 by requiring the Commissioner to establish by rule an optional preauthorization plan for eligible employers who participate in the pilot program. The optional preauthorization plan allows small employers to obtain Division approval of workplace modifications and changes prior to incurring the out-of-pocket expenses associated with implementing the modifications and changes. HB 886 requires a small employer who wants to participate in the optional preauthorization plan to submit a proposal to the Division, in the manner prescribed by the Division, that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. HB 886 provides that if the Division approves the employer's proposal, the Division will guarantee reimbursement of the expenses incurred by the employer in implementing the modifications and changes from the return-to-work account unless the Division determines that the modifications and changes differ materially from the employer's proposal. Reimbursement under the optional preauthorization plan is subject to the $2,500 limit.

The adopted amendment to §137.41 and new §137.49 establishes the optional preauthorization plan. The adopted amendment to §137.41 incorporates new §137.49 into the rules in Subchapter B that establish and set forth the terms, conditions, and requirements for the pilot program. New §137.49 establishes the procedures and requirements for the optional preauthorization plan whereby small employers may submit a proposal plan to the Division that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. This new rule also provides that if the Division approves the employer's proposal, the Division will guarantee reimbursement of the expenses incurred by the employer in implementing the modifications and changes from the return-to-work account.

The amendment to §137.41 adds new §137.49 to the purpose provision of Subchapter B. Amended §137.41 provides that the purpose of §§137.41 - 137.49 is to set forth the terms, conditions, and requirements for the return-to-work pilot program for small employers.

New §137.49(a) specifies who is eligible to apply for a guaranteed reimbursement of expenses from the return-to-work account. This subsection states that an "eligible employer," which is defined by Labor Code §413.022(a)(2) and §137.42(2), may apply for a guaranteed reimbursement of expenses. This subsection also states that an eligible employer may apply for a guaranteed reimbursement of "eligible expenses." "Eligible expense" is defined by §137.42(3).

New §137.49(b) specifies how an eligible employer applies for a guaranteed reimbursement of expenses. This subsection requires the employer to submit to the Division a properly completed Preauthorization Proposal Plan (DWC Form - 008) that includes a description of the proposed modifications and changes, the estimated costs of those modifications and changes, and a copy of the Division's "Work Status Report" from the injured employee's examining doctor.

New §137.49(c) provides that an incomplete proposal plan may be denied or returned to the employer for additional information.

New §137.49(d) provides that the Division will make the Preauthorization Proposal Plan form available on the Division's website located at *http://www.tdi.state.tx.us/wc/index.html* and at the Division's central office and will provide the form to an employer upon request.

New §137.49(e) requires the return-to-work account administrator to review each submitted proposal plan in accordance with §137.48. This subsection provides that the administrator may approve or deny the proposal plan in whole or in part or request additional information. The administrator must promptly notify the employer in writing of the approval or denial of the employer's proposal plan.

New §137.49(f) specifies the process the employer must follow to obtain reimbursement. This subsection requires the employer to complete the approved modifications and changes and to submit to the Division an application for reimbursement under §137.46 that contains the information under §137.47.

Upon receipt of a properly completed application for reimbursement and subject to §137.44, new §137.49(g) requires the Division to reimburse the employer the costs the employer incurred in making the approved modifications and changes. This subsection permits the Division to deny reimbursement if the Division determines that the modifications and changes differ materially from the proposal plan.

Comment: A commenter recommends that §137.49(c) provide, "An incomplete proposal plan shall be returned to the employer for additional information with an explanation of how or why the proposed plan is deficient or incomplete. An incomplete or deficient proposal plan may be denied upon resubmission to the Division." The commenter makes this recommendation arguing that an employer should be entitled to an explanation of the deficiencies and given an opportunity to correct the deficiencies before having a proposal plan denied.

Agency Response: The Division disagrees that this additional language should be added. The Division believes new §137.49(c) and (e) address the commenter's concern. New §137.49(c) and (e) both provide that the Division may request the employer to provide additional information. These subsections permit the Division to inform an employer on what information is necessary to correct a deficient proposal plan. Further, in the case of a denial, new §137.49(e) provides that the Division will promptly notify the employer of the denial in writing. The Division interprets this subsection to require this written notification to include the reason(s) for the denial. Additionally, no rule prohibits an employer from resubmitting a corrected proposal plan after a denial.

Comment: A commenter states that requiring an employer to submit an application for reimbursement after completing the modifications and changes set out in an approved proposal plan is an unnecessary duplication of effort and requires a preauthorization applicant to do the same thing a non-preauthorization applicant must do thereby undermining the purpose and effectiveness of the optional preauthorization plan. Further, the commenter recommends requiring an employer seeking reimbursement to submit to the Division a certification stating the workplace modifications have been completed in accordance with the approved proposal plan and that the criteria of §137.47(1), (2), and (3) has been satisfied.

Agency Response: The Division does not agree that requiring an application for reimbursement is an unnecessary duplication of effort nor undermines the purpose and effectiveness of the optional preauthorization plan.

The Division is requiring the employer to submit an application for reimbursement after implementing the modifications and changes because the Division anticipates that there may be cases where the modifications and changes implemented will deviate to a certain extent from those described in the approved proposal plan. The Division interprets the Labor Code and this rule to permit some deviations as long as those deviations are not material. In cases where there is a deviation, the Division must determine whether the deviation is material. A properly completed application for reimbursement will provide the Division with information to make this determination.

The DWC Form - 008 is a dual purpose form setting out the information required for both the proposal plan and the application for reimbursement. An employer may designate on this form which one is being submitted by checking the appropriate box at the beginning of the form. This form is available on the Division's website in both a .pdf and .doc format and both formats allow this form to be completed electronically and saved. Completing and submitting the application for reimbursement where there is an approved proposal plan should be simple and not time consuming. An employer may utilize the electronic copy of the already completed and approved proposal plan when completing an application for reimbursement.

Further, this new section requires the Division to reimburse the employer upon Division receipt of a properly completed application for reimbursement. Receipt of the application for reimbursement triggers reimbursement. The application for reimbursement is not subject to the same evaluation as it is when an employer goes through the non-preauthorization process because the modifications and changes have already been reviewed and approved during the evaluation of the proposal plan. Thus, in the optional preauthorization plan, the application for reimbursement acts as a certification. The only instance where the Division must perform an additional evaluation of the application for reimbursement is if the modifications and changes implemented differ from those set out in the approved proposal plan. In this instance and as required by Labor Code §413.022 and new §137.49(g), the Division must determine whether the modifications and changes implemented differ materially from the proposal plan.

For: None

For with changes: Office of Injured Employee Counsel

Against: None

This proposed amendment and new section is adopted under Labor Code §§413.022, 402.00111, and 402.061.

Labor Code §413.022 requires the Commissioner of Workers' Compensation by rule to establish an optional preauthorization plan for eligible employers who participate in the return-to-work pilot program. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800243
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4288

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §§17.1, 17.2, 17.4, 17.10, 17.12, 17.14, 17.15, 17.17, 17.20

The Texas Commission on Environmental Quality (commission) adopts amendments to §§17.1, 17.2, 17.4, 17.10, 17.12, 17.15, 17.17, and 17.20. The commission also adopts new §17.14.

The commission adopts amendments to §§17.1, 17.4, 17.12, 17.17 and 17.20 *without changes* to the proposed text as published in the October 5, 2007 issue of the *Texas Register* (32 TexReg 6985) and will not be republished. The commission adopts amendments to §§17.2, 17.10, 17.15, and new §17.14 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The program for providing tax relief for pollution control property was established under a constitutional amendment listed as Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature added Texas Tax Code (TTC), §11.31, Pollution Control Property, and TTC, §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted 30 TAC Chapter 277 on September 30, 1994, to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was changed to Chapter 17 to be consistent with the commission's policy to place general or multimedia rules within 30 TAC Chapters 1 - 100. In 2001, the Texas Legislature enacted House Bill (HB) 3121 during the 77th Legislative Session. HB 3121 amended TTC, §11.31 in several respects. First, HB 3121 required that the commission adopt specific standards for considering applications to ensure that use determinations are equal and uniform, and to allow for partial determinations. Second, HB 3121 created an appeals process for a person seeking a use determination from the executive director, or the chief appraiser of the appraisal district for the county in which the property is located. Third, HB 3121 required the commission's executive director to provide a copy of the use determination to the chief

appraiser of the appraisal district for the county in which the property is located.

In 2007, the Texas Legislature enacted HB 3732 during the 80th Legislative Session. HB 3732 amended TTC, §11.31, Tax Relief for Property Used for Environmental Protection, by adding three new subsections. TTC, §11.31(k) requires the commission to adopt, by rule, a list of pollution control property which must include the listed 18 categories of items. TTC, §11.31(l) requires the commission to adopt a procedure to review the list at least once every three years and allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. TTC, §11.31(m) requires the executive director to review applications containing only items on the adopted list, and to issue a determination without regard to the information provided in response to TTC, §11.31(c)(1) within 30 days of receipt of the required application documents.

TTC, §11.31(k) requires the TCEQ to adopt a list containing the 18 categories of equipment. However, §11.31(k) does not provide the pollution control percentage for each of the 18 categories of items. Staff reviewed these items and determined that the pollution control percentage could vary depending upon the type of facility where the property is located, and the function of the property. After discussions with stakeholders, program staff developed a two-part list. Part A is the former Predetermined Equipment List, which consisted of the property that the executive director had determined to be used either wholly or partly for pollution control purposes. Part B of the list consists of the 18 property categories listed in TTC, §11.31(k). Part B categories will then be further defined in the program guidelines document. The items in Part B are listed without set use determination percentages. Applicants will be required to calculate an application-specific determination for each piece of equipment. It is the responsibility of the executive director to determine the proper use percentage using the range of 0%-100%. Simply because a piece of equipment is on the Equipment and Categories List or purports to fall under a category set forth on the list, does not mean that it will receive a positive use determination. The use percentage will be calculated for each piece of property on an application-by-application basis.

This adopted rulemaking amended Chapter 17 by adding one new subsection and by modifying the application review process in order to meet the requirements of TTC, §11.31(m).

In addition these adopted amendments corrected references to the TCEQ.

SECTION BY SECTION DISCUSSION

The adopted amendments to §17.1, Scope and Purpose, remove the phrase "including political subdivisions." The adoption of new 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements, implements Texas Tax Code (TTC), §26.045, Rollback Relief for Pollution Control Requirements. Political subdivisions are no longer covered under Chapter 17.

The adopted amendments to §17.2, Definitions, add definitions for the acronyms TCAA and TSWDA and includes the Texas Tax Code (TTC) in the list of regulations where terms used in this chapter may be defined. The adopted amendment changes the definition of Decision Flow Chart in §17.2(5) to reflect that it will not be used for applications containing property listed or contained in Part B of the Equipment and Categories List (ECL). The adopted amendment adds §17.2(6) which provides the definition for ePay, which is the commission's electronic payment system. The use of ePay provides applicants with an additional method for paying application fees. The adopted amendment adds §17.2(7), which provides the definition for Equipment and Categories List (ECL). The ECL is a two-part list. Part A of this list is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B includes the property categories listed in TTC, §11.31(k). The adopted amendment renumbers §17.2(6) as §17.2(8). The adopted amendment adds §17.2(9) which provides the definition for the Part B Decision Flow Chart. The adopted amendment renumbers §17.2(7) and (8) as §17.2(10) and (11) respectively. The adopted amendment removes §17.2(9) to reflect the elimination of the Predetermined Equipment List. The adopted amendment renumbers §17.2(10) - (13) as §17.2(12) - (15) respectively. The adopted amendment adds §17.2(16) which provides a definition for Tier IV, the fee level for applications containing property which is listed or contained in Part B of the Equipment and Categories List. The adopted amendment renumbers §17.2(14) and (15) as §17.2(17) and (18) respectively. The adopted amendment adds new §17.2(18)(E) which explains what information will be included with the use determination letter. The adopted amendment reletters existing §17.2(18)(E) as §17.2(18)(F). Section 17.5(15) is adopted with changes to the text. Language was added to clarify that items listed on Part A of the Equipment and Categories List may be listed with partial determinations but do not require a Tier III analysis.

The adopted amendment to §17.4, Applicability, deletes §17.4(c). The property which was listed in the list referred to in this subsection is now included in Part A of the Equipment and Categories List (ECL), set forth in §17.14. The commission will no longer maintain a list called the Predetermined Equipment List. The adopted amendment adds "applicable" to §17.4(d) in order to show the existence of two decision flow charts and two partial determination processes.

The adopted amendment to §17.10, Application for Use Determination, removes "Texas Natural Resource Conservation Commission" from §17.10(a)(1) and replaces it with "commission." The adopted amendment removes the phrase "other than a political subdivision" from §17.10(c). The program for political subdivisions has been relocated to Chapter 18. The adopted amendment corrected grammar in this subsection. The adopted amendment to §17.10(d)(1) adds language in order to show that this subsection does not apply to Tier IV applications. The adopted amendment renumbers §17.10(d)(6) - (9) to §17.10(d)(7) - (10) respectively. The adopted amendment adds §17.10(d)(6) in order to reflect the requirement that a worksheet containing the calculation of the pollution control percentage must be provided for Tier IV applications. The adopted amendment adds the word "appropriate" to §17.10(d)(10) in order to reflect that there are now two Decision Flow Charts. Section 17.10(a)(1) is adopted with changes to the proposed text. The commission received several comments in regards to chief appraiser notification. One common comment was that a complete application should be sent to the chief appraiser along with the required notification letter. The words "and one copy" were added to require the applicant to supply the TCEQ with two full applications. Policy will be developed requiring that staff send the copy to the appraisal district with the appropriate notification.

The adopted amendment to §17.12, Application Review Schedule, changes the 30-day administrative review period listed in §17.12(2) into a three-day period, in order to implement the HB

3732 requirements that the application review process described in TTC, §11.31(m), be limited to 30 days. The adopted amendment removes the word "deficient" from §17.12(2)(A) and inserts the phrase "not administratively complete" to better define the differences between the two types of deficiencies. The adopted amendment adds "For Tier I, II, and III applications" to §17.12(2)(B) in order to differentiate between existing fee levels and the new fee level for Tier IV applications. The adopted amendment adds §17.12(3), which explains that the technical review period for Tier IV applications is limited to 30 days. The adopted amendment renumbers existing §17.12(3) to §17.12(4).

The adopted new §17.14, Equipment and Categories List, provides the Equipment and Categories List (ECL). The ECL is a two-part list. Part A is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of the property located in TTC, §11.31(d). Figure: 30 TAC §17.14(a) is adopted with changes. In order to define the basis for calculating the "incremental cost difference" the following language has been added to the end of the description paragraph in Part A of the ECL: "For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property that does have the pollution control feature." The following language was also inserted into the description paragraph in Part A of the ECL: "The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site." The language allows for calculation of a use determination percentage which is different from the listed one if it is determined that on a particular application the listed percentage is not appropriate. The following language was added in the description paragraph for Part B of the ECL: "Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list." This will assist applicants in determining the correct Tier level and fee for their application. The description of item A-112 on the ECL was amended to read: "The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item." This was done to clarify that the 100% use determination relates only to the pollution control aspect of the new device. During the consolidation of the previous Predetermined Equipment List into the new ECL, staff left five items related to painting and blasting operations off of the list. As a result of discussions on incorporating the incremental cost difference concept into the rule, these items have been added to Part A of the list as items A-186 through A-190.

The adopted new §17.14(b) defines the review process of the ECL list as at least once every three years. The adopted amendment created new §17.14(b)(1), which defines the requirements for adding an item to the ECL, and new §17.14(b)(2), which defines the requirements for removing an item from the ECL.

The adopted amendment renumbers §17.15, Review Standards, to §17.15(a) and amends §17.15(a) by removing two incorrect references to the program's name and stating that the chart in Figure: 30 TAC §17.15(a) is not to be used for Tier IV applications. The adopted amendment removes two incorrect references to the program's name from Figure: 30 TAC §17.15(a). Figure: 30 TAC §17.15(a) is adopted with changes. The diagram has been modified to show that a partial analysis must be done first in order to determine the appropriate Tier level. The adopted amendment adds new §17.15(b), which states that both the applicant and the executive director will use the new Part B Decision Flow Chart for applications containing only items listed or contained in Part B of the Equipment and Categories List (ECL). The adopted amendment adds new Figure: 30 TAC §17.15(b) "Part B Decision Flow Chart." This is necessary in order to establish in detail the review process for an application containing only items listed or contained in Part B of the ECL, which differs from the standard review process. Figure: 30 TAC §17.15(b) is adopted with changes. There were two places on the figure that referenced the Decision Flow Chart. The references were amended to read: "Decision Flow Chart located in §17.15(a)." This clarifies which Decision Flow Chart is being referenced by this section.

The adopted amendments to §17.17, Partial Determinations, amends §17.17(a) to reflect that, where applicable, a partial determination must be calculated for all pieces of equipment listed or contained in Part B of the ECL and for property which is not used wholly as pollution control property. The adopted amendment to §17.17(b) reflects that the formula in Figure: 30 TAC §17.17(b) is to be used for all partial determinations except those which contain property listed or contained in Part B of the ECL. The adopted amendment adds new §17.17(d) which explains that it is the responsibility of the applicant to determine a reasonable method for calculating a partial determination for all items submitted under a category or categories contained in Part B of the ECL. In addition, subsection (d) also explains that it is the responsibility of the executive director to determine if the proposed method is appropriate. The adopted amendment reletters existing §17.17(d) as §17.17(e) in order to reflect the addition of new subsection (d). The adopted amendment to subsection (e) adds the "method accepted by the executive director under subsection (d) of this section."

The adopted amendment to §17.20, Application Fees, amends §17.20(a) in order to reflect that there would be four fee levels rather than three. The adopted amendment to §17.20(a)(1) explains that the Tier I fee level applies to applications containing only property listed in part A of the ECL. The adopted amendment to §17.20(a)(2) replaces the reference to the Predetermined Equipment List with a reference to the ECL. The adopted amendment adds new §17.20(a)(4) in order to establish a new Tier IV level for applications containing property which is purported to fall under a category or categories listed on Part B of the Equipment and Categories list. The adopted amendment adds "administratively" to §17.20(b) as a means of defining the word "complete." The adopted amendment to §17.20(c) adds the word "either" and the phrase "or by electronic funds transfer by using the commission's ePay system." This will allow applicants to remit application fees through the electronic payment system. In addition, the adopted amendment to this subsection corrects the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." The adopted amendment further amends this section by removing the phrase "and delivered with the application to

the TNRCC, at the address listed on the application form." This phrase is moved to new §17.20(d). The adopted amendment adds §17.20(d) which requires that the application fee must be delivered with the application. In addition, this adopted new section clarifies that if the applicant pays the applicant fee by using the ePay system, a copy of the receipt must be included with the application form.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of "a major environmental rule." Under Texas Government Code, §2001.0225, "a major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking amended the Tax Relief for Pollution Control Property rules. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these amended rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted amendments. Enforcement of these adopted rules would be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The adopted amendments are not a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505, concerning rules subject to the Texas Coastal Management Program (CMP), and will not require that goals and policies of the CMP be considered during the rulemaking process.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on October 26, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. This was a joint hearing at which comments were also received on proposed amendments to Chapter 18. The hearing was attended by twenty-three people. Oral comments were provided by four attendees. The commission received comments from State Representative Dennis Bonnen, State Representative Lon Burnam, State Representative Myra Crownover, State Representative Joe Deshotel, State Representative Juan M. Garcia III, State Representative Richard L. "Rick" Hardcastle, State Representative Tan Parker, State Representative Mike O'Day, State Representative Dora Olivo, State Representative Alan B. Ritter, State Representative Beverly Woolley, State Senator Chris Harris, State Senator Robert L. Nichols, State Senator Tommy Williams, City of Houston Mayor Bill White (Houston), Harris County Judge Ed Emmett (Harris), Jefferson County Judge Ronald Walker (Jefferson), Newton County Judge Truman Dougharty (Newton), Nueces County Judge Samuel L. Neal, Jr. (Nueces), Orange County Judge Carl K. Thibodeaux (Orange), San Patricio County Judge Terry Simpson (San Patricio), Harris County Precinct 2 Commissioner Sylvia R. Garcia (Garcia), Harris County Attorney's Office (HCA), Dallas Central Appraisal District Chief Appraiser W. Kenneth Nolan (DCAD), Deer Park Independent School District Superintendent Arnold Adair and Board President Rhonda Lowe (DPISD), Pasadena Independent School District Superintendent Kirk Lewis (PISD), Port Arthur Independent School District Superintendent Johnny E. Browen, Ph.D. (PAISD), Port Neches-Groves Independent School District Superintendent Dr. Lani Randall (PNGISD), Association of Electric Companies of Texas, Inc. (AECT), Clean Coal Technology Foundation of Texas (CCTFT), County Judges & Commissioners Association of Texas (CJCAT), Texas Association of Business (TAB), Texas Association of Counties (TAOC), Texas Association of School Administrators (TASA), Texas Chemical Council (TCC), Texas Conference of Urban Counties (TCUC), Texas Mining and Reclamation Association (TMRA), Texas Oil & Gas Association (TxOGA), Texas Taxpayers and Research Association (TTARA), Jackson Walker, L.L.P. (Jackson), Marathon Petroleum Company, LLC. (Marathon), NRG Texas LLC. (NRG), Pritchard & Abbott, Inc. (Pritchard), Sierra Club (Sierra), Individual.

RESPONSE TO COMMENTS

General comments in support of the rule package and the Tax Relief for Pollution Control Property application process were received from Harris County Judge Ed Emmett, Jefferson County Judge Ronald Walker, Harris County Commissioner Sylvia Garcia, Jackson, TAOC, CCTFT, TMRA, TCUC, TxOGA, and the City of Houston.

The commission appreciates the comments. The commission made no changes to the rule in response to these comments.

Harris County Judge Ed Emmett, Jefferson County Judge Ronald Walker, Harris County Commissioner Sylvia Garcia, and Orange County Judge Carl Thibodeaux specifically endorse the comments provided by the Texas Conference of Urban Counties.

The commission appreciates the comments. Specific responses to the TCUC comments are provided later in this document. The commission made no changes to the rule in response to these comments.

TCC provided general comments supporting the rule and a specific comment stating that they support the comments provided by TTARA, relating to the role of chief appraisers in the use determination process.

The commission appreciates the comments. Please see section on chief appraiser notification for response to TTARA's comments on this issue. No change has been made with regard to these comments.

Pritchard provided comments about the Predetermined Equipment List (PEL) Advisory Group which was formed by the TCEQ in June 2007. Pritchard commented that "industry representatives far outnumber appraisal district representatives and collectively sway the evaluations and determinations."

The commission appreciates the comment, but determined that the comment is outside of the scope of the rulemaking. No changes to the rule were made in response to this comment.

Senator Harris, Senator Nichols, Senator Williams, Representative Crownover, Representative O'Day, Representative Deshotel, Representative Garcia, Representative Olivo, Representative Bonnen, Garcia, San Patricio, Nueces, PAISD, PISD, PNGISD, CJCAT, DPISD, HCA, Harris, Newton, Houston, TASA, and Pritchard expressed concern that the rule changes could lead to a significant negative impact on local property tax revenue and economic growth. The commenters requested that the commission narrowly interpret Texas Tax Code (TTC) §11.31. Newton suggested that any exemptions be phased in as a way to mitigate the loss. CCTFT commented that "{a}llegations that implementing HB 3732 will result in billions of dollars coming off the tax rolls are unsupported conjecture and should be rejected."

The commission appreciates the comments and understands the concerns about potential property tax revenue impacts associated with the amendments to 30 TAC Chapter 17. The tax exemption process for pollution control property is a two-step process. The first step requires the TCEQ to review the property to determine if it qualifies as pollution control property. Once this has occurred, the applicant files an exemption request with the appropriate appraisal district. Except in cases where a partial determination is being calculated, the dollar value of the property does not play a part in the use determination process. In cases where the executive director makes partial determinations, the final determination is expressed as a percentage of the total value of the equipment and not in a dollar amount. TTC, §11.31 does not authorize the commission to, and the commission does not consider the actual dollar amount of tax exemptions received by the applicants. This determination is made by the appraisal districts after the executive director's final decision on whether the equipment is used wholly or partly to control air, water or land pollution. TCEQ is mindful of the fact that laws related to tax exemptions are to be narrowly interpreted. However, when drafting regulations the commission is limited to implementing the clear language in the statute and relying upon legislative intent in cases of ambiguity. TTC, §11.31 does not allow for the phasing in of exemptions. No changes have been made in response to these comments.

TAOC commented that, due to the potential increase in the number of applications and the increased difficulty of the application process the TCEQ should ensure that sufficient resources be provided so that fair and accurate reviews will be conducted.

The commission appreciates this comment. TCEQ management will ensure that any additional necessary resources will be furnished to implement the rule amendments. No changes were made to the rule in response to this comment.

TMRA commented that they support the comments provided by the CCTFT, Jackson, and TTARA.

The commission appreciates the comment. Specific responses to CCTFT, Jackson and TTARA's comments are provided later in this document. No change was made to the rule in response to this comment.

TxOGA commented on the eligibility of "Green Products" to qualify for a positive use determination. In their opinion, property put into place in order to meet a market demand for green products should not be eligible for a positive use determination, but that property installed in order to meet an environmental initiative should be eligible.

The commission appreciates the comment and agrees that property installed to meet a market demand to create a green product would not be eligible for a positive use determination. The commission does not agree that a piece of equipment is automatically eligible for tax exemption under TTC, §11.31 simply because it was installed to meet an environmental initiative. A piece of equipment installed to meet an environmental initiative must also satisfy all statutory and regulatory requirements to qualify for a positive use determination including that it provide a pollution control benefit at the site. No changes were made to the rule in response to this comment.

General Comments Relating to the Scope and Intent of §11.31(k)

During the proposal agenda the commission directed staff to solicit "comments on whether Part B should be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003." Representative Hardcastle, Sierra, Representative Woolley, Representative Parker, and CCTFT provided general comments on this issue.

Representative Hardcastle commented that the overall intent of HB 3732 is to "ensure that Texas continue to build power plants that are" clean and to make electricity affordable. However, the legislature did not intend to limit the categories of equipment listed in HB 3732 to advanced clean energy projects. Sierra commented that their review of the legislative history of HB 3732 leads them to the conclusion that Section 4 of HB 3732 is not tied to clean energy projects. Sierra stated that the TCEQ should perform due diligence to ensure that the use determination includes only the pollution control aspect of the property. Representative Woolley and Representative Parker commented that the purpose of the bill was to provide incentives to electric generation projects. CCTFT, supported by TMRA commented that: "Part B of the ECL should not be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003."

The commission appreciates the comments provided by commenters regarding the scope and legislative intent of HB 3732. As a state agency, the commission is required to follow the mandates of the legislature regarding implementation of the statutes it enforces. When implementing a statute, the commission gives effect to its "plain language." In implementing HB 3732, staff is mindful that tax exemption statutes "are subject to strict construction." In reviewing the text and legislative history of HB 3732, staff concludes that the categories of equipment listed in it are not limited to advanced clean energy projects. However, as urged by the commenters, and consistent with existing

regulations unaffected by HB 3732, the executive director is required to consider: 1) whether each category of equipment listed in TTC, §11.31(k) is used wholly or partly to control air, water or land pollution; and 2) whether the equipment provides environmental benefit at the site. No changes were made to the rule in response to these comments.

Comments Relating to Chief Appraiser Notification

During the proposal agenda the commission directed staff to solicit "comments on the appropriate format and process for notifying the chief appraiser for the appraisal district where the pollution control equipment is located." Representative Burnam, TAOC, Sierra, TCUC, Harris, TTARA, TCC, CCTFT, and TAB provided comments on this issue. Representative Burnam commented that the TCEQ should require the applicant to provide a detailed cost analysis and that the local tax assessor should be given an opportunity to review the analysis to ensure the accuracy of the application and the impact on the local tax base. TAOC commented that the TCEQ should provide the chief appraisers enhanced opportunities to comment during the application review process. TAOC suggested that chief appraisers be provided ample notice, a copy of the complete application, and an opportunity to comment before the use determination is issued. Sierra commented that a requirement that the chief appraiser be notified as soon as possible after an application is filed and that notification should include a copy of the complete application and any attachments should be added to the rules. Sierra provided specific language to change §17.12(1). Under Sierra's proposed language, the section would require that notice be sent within ten days of receipt and that a list of equipment and associated dollar values be included. It goes on to say that a copy of the complete application and any supporting materials must be mailed to the chief appraiser within ten days if the chief appraiser requests it. TCUC commented that §17.12 should be amended to allow the appraisal district time to comment on a tax exemption application, ten business days after issuance of notice of an application, and to require that a copy of the administratively complete application be provided to the chief appraiser. Harris commented that TCEQ should provide a complete copy of each application to the appropriate appraisal district and to provide 10 days for the appraiser to comment on each application. TTARA's comments provided an overview of the laws applicable to the Tax Relief Program with regard to notification of the appropriate chief appraiser and participation by the chief appraiser in the review process. TTARA pointed out that the statute created a two-part process for obtaining an exemption for pollution control property. The first part requires the TCEQ to evaluate the property to determine whether or not it provides pollution control. The second part requires the chief appraiser to determine the dollar value of the property. TTC provides the chief appraiser with an appeals process if they disagree with a use determination. TTARA also stated that nowhere in the code is there any language that would suggest that the chief appraisers have involvement in the application review process. TTARA encourages the TCEQ to maintain the separation between the two processes. They provided a specific comment in response to the question asked about chief appraiser notification and involvement. TCC commented in support of TTARA's comments. CCTFT commented that "Section 11.31(d) requires the executive director to notify the chief appraiser that an application has been filed and to send the appraiser the determination letter. Nothing more is required under the statute." TAB commented generally that they support the proposed rule package. They do not support the adoption of any process which would expand the chief appraiser's role in the use determination review process. They expressed preference for the current system that requires the executive director to determine whether the equipment is used for pollution control and the chief appraiser to determine the dollar amount of the tax exemption to be granted to an applicant with a positive use determination.

The commission appreciates the comments, but respectfully disagrees that the rules should be amended to allow chief appraisers or tax assessors to comment on a use determination application before the executive director makes a final determination on the application. TTC §11.31(d) does not authorize this procedure. To allow a comment period for the chief appraiser would also frustrate the speedy review process contemplated by HB 3732 with respect to the categories of equipment listed in TTC, §11.31(k). TTC, §11.31(d) states that the executive director shall: determine if a piece of equipment is used wholly or partly to control air, water or land pollution; send notice to the chief appraiser for the county where the equipment is located "as soon as practicable" that the applicant has applied for a use determination; and send a copy of the use determination letter issued to the applicant to the chief appraiser. The chief appraiser has no role in the determination of whether a piece of equipment provides pollution control benefit. In fact, TTC, §11.31(i) mandates that the "chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property." The appeals process contained in TTC, §11.31(e) and 30 TAC §17.25 provides the sole avenue for the chief appraisers to challenge the executive director's use determination on an application. The statutory and regulatory structure would be flustered if the commission were to allow comment on each application for use determination. The executive director is currently required by §17.12(1) to send notice to the chief appraiser as soon as practicable after receipt of an application. Program policy defines "as soon as practicable" to mean when an application is declared to be administratively complete. The TCEQ is confident that the chief appraiser is provided adequate opportunity to consider and exercise its opportunities for appeal under this timeline construction. The executive director is currently working on updating a standard operating procedure (SOP) for use in use determination reviews. It is anticipated that the SOP will formalize the executive director's current procedure of providing notice and a copy of the complete application to the chief appraiser. Section 17.10(a)(1) has been amended to require the applicant to provide an original and one copy of the application. The application will be furnished solely to give the chief appraiser information regarding the property being reviewed for use determination under TTC, §11.31.

Comments Relating to Environmental Benefit at the Site

The commission directed staff to solicit comments on the current regulation pertaining to the requirement that there be an environmental benefit at the site for the facility, device, or method for the control of air, water, or land pollution to be eligible for a positive use determination.

Representative Burnam, CCTFT, Sierra, TAOC, and TxOGA commented on the requirement for environmental benefit at the site issue. CCTFT commented that HB 3732 has no impact on the ongoing debate as to whether pollution control property has to provide an environmental benefit at the site to be eligible for a positive use determination. "CCTFT does not support and the TCEQ should not accept arguments that HB 3732 clarified that off-site benefits should be recognized in issuing exemptions

for on-site" benefit. Sierra commented that the commission should continue to require environmental benefit at the site for Tier I, II, and III applications and at least request information regarding environmental benefit at the site for Tier IV applications. They provided suggested changes to §17.10(d)(1) which would implement this proposal. Representative Burnam and TAOC agree with the current regulation requiring environmental benefit at the site. TxOGA commented that a pollution control device should be eligible for a positive use determination even when such a device does not produce environmental benefit at the site. TxOGA proposed that the commission revise box 5 in the current decision flow chart to read "{i}s an environmental benefit created by pollution control property which is located at the site?"

Having reviewed the comments on both sides of this issue, the commission will continue to require environmental benefit at the site as required by the statute and regulations. HB 3732 states that the executive director shall determinate whether a device is used wholly or partly to control pollution within 30 days of receipt of an application without regard to whether information on anticipated environmental benefit has been submitted by the applicant. The bill however, does not nullify the requirement to require environmental benefit at the site. It should be noted that the lack of documentation supporting a use determination application would force the executive director to make a decision on an application without the benefit of having all the information necessary to make a sound scientifically based determination. Such a situation could result in a negative use determination. Finally, staff would note that the issue of requiring environmental benefit at the site was litigated in Trent Wind Farm, L.P v. Texas Commission on Environmental Quality, GN2-04045, 200th Judicial District Court of Travis County (April 19, 2004). The court sustained the regulatory requirement of environmental benefit at the site by granting summary judgment in favor of the TCEQ and the co-defendants in the case. No changes were made to the rules in response to these comments.

Comments Relating to §17.2

Sierra commented that the definition of Tier III should be clarified to ensure that Tier III applications are not submitted for items listed on the ECL under §17.14(a).

The commission appreciates the comment and agrees that additional language similar to that suggested by Sierra is needed to clarify the definition of Tier III. The definition is therefore revised to read as follows: "An application for property used partially for the control of air, water, and/or land pollution, but that is not on the Equipment and Categories List located in §17.14(a) of this title."

Comments Relating to §17.4

Houston commented that the program should be limited so that only property which is installed to exceed an environmental requirement is eligible for the tax incentive.

The commission appreciates the comment, but respectfully disagrees. Article 8, §1-1 of the Texas Constitution provides that property installed to *meet* or exceed rules or regulations promulgated by any governmental environmental protection agency to control air, water, or land pollution is eligible for pollution control property tax exemption. Similarly, TTC, §11.31(b) defines pollution control property as property "installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state or a political subdivision of this state" for the control of air, water, or land pollution. Property installed to *meet* an environmental requirement has the same eligibility as property installed to exceed an environmental requirement. The commission made no changes to the rule in response to this comment.

Pritchard commented that property should be eligible for a positive use determination only if the application is filed in the first year that the property becomes taxable. CCTFT commented that under the statute any pollution control property which became taxable for the first time on or after January 1, 1994, is eligible for a positive use determination.

The commission appreciates both comments. Article 8, §1-1(b) of the Texas Constitution states that tax exemption for pollution control property applies to property which became taxable for the first time on or after January 1, 1994. Neither the constitution nor the statute provides any language which would authorize the commission to limit pollution control property tax exemption applications to be filed within the first year that the property became taxable. No changes were made to the rule in response to this comment.

Comments Relating to §17.10

An individual commented that a minimum pollution control threshold should be established by rule and that this threshold must be met before a piece of equipment is eligible for consideration for a pollution control property tax exemption.

The commission does not see a need for an additional threshold beyond that required by the constitution, the statute and the commission regulations. Under the current and proposed rules, to be eligible for tax exemption: 1) each piece of property must be installed in order to meet or exceed an adopted environmental rule or regulation; and 2) the property must provide an environmental benefit at the site. These statutory and regulatory requirements are designed to ensure that the installation of the property results in pollution control. No changes were made to the rule in response to this comment.

Comments Relating to §17.14

Representatives Ritter, Parker and Hardcastle, and PAISD commented that the TCEQ must exercise discretion in designating property as pollution control, has the authority to add items to the list, and to determine the eligibility of properties listed in HB 3732 as pollution control properties. TAOC expressed concerns about property categories listed in HB 3732 and the potential that partial determinations might reflect not just pollution control, but also contributions to production or energy efficiency.

The commission appreciates the comments. The commission agrees that it has the statutory authority under HB 3732 to remove categories of equipment from the list contained in TTC, §11.31(k) and to review properties to ensure that they control air, water, or land pollution. The commission agrees that the calculation of partial determinations must be done in a way to ensure that the use determination is limited to the pollution control aspect of the property. Under the adopted rules, Tier IV applications will be reviewed on a case-by-case basis; and an applicant submitting a Tier IV application must provide calculations to determine and justify the qualifying pollution use percentage. The commission made no changes to the rule in response to this comment.

TxOGA commented about the pollution control eligibility of manufacturers of pollution control equipment used to manufacture a product which controls or prevents pollution. The comments include a general discussion of TTC, §11.31(a) and a reference to

a 1996 Texas Attorney General's opinion. TxOGA's comments include a discussion of the pollution control applicability of equipment installed in order to produce low sulfur diesel and gasoline. TxOGA and Marathon requested that downstream Hydrotreaters and Sulfur Recovery Units be added to Part A of the ECL.

The commission appreciates the comment. TTC, §11.31(a) provides that "person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution." Commission regulations under 30 TAC §17.15 require environmental benefit at the site for an installation to be eligible for pollution control property tax exemption. A piece of equipment used to manufacture a property that controls pollution is not statutorily eligible for pollution tax exemption. Production equipment that does not provide environmental benefit at the site is not eligible for pollution control property tax exemption. Pieces of equipment (such as Hydrotreaters and Sulfur Recovery Units used to manufacture low sulfur diesel and gasoline) installed to meet a federal environmental initiative that does not provide environmental benefit at the site are not eligible for Texas pollution control property tax exemption. The commission made no changes to the rule in response to this comment.

Pritchard provided comments on the removal of three specific items from Part A of the ECL. They requested that Drilling Mud Recycling Systems (M-15); Drilling Rig Spill Response System (blowout preventors) (M-16); and Cathodic Protection (for oil and gas pipelines) (M-31) be removed from Part A of the ECL. While acknowledging that the items have some pollution control benefits, they contend however that they should be removed from Part A of the ECL because they are installed primarily for production and safety purposes.

The commission appreciates this comment, but respectfully disagrees with the comments on items M-15, M-16 and M-31. The executive director has determined that Mud Recycling Systems, Blowout Preventers, and Cathodic Protections are installed for pollution control purposes. The commission sustained the executive director's use determination regarding Mud Recycling Systems and Drilling Rig Spill Response Systems in previous use determination appeal hearings. No changes were made to the rule in response to this comment.

Jackson commented that the HB 3732 property list reaffirms that production equipment using new or advanced technologies may have a pollution control benefit.

The commission appreciates this comment and agrees that certain production equipment using advanced technologies may also have pollution control benefits. However, each category of equipment listed in TTC, §11.31(k) will be considered on an application-specific basis to determine whether the equipment is installed to wholly or partly control air, water, or land pollution. Under the adopted rules, the categories of equipment listed in HB 3732 are incorporated into rule in Part B of the ECL. No changes were made to the rule in response to this comment.

Sierra commented that §17.14(a) should be amended to include: "Applicants should first view Part A of the Equipment and Categories List to see if their equipment might already be on that list."

The commission appreciates this comment and agrees with this suggestion and has amended §17.14(a) accordingly. In addition, the program guidelines manual and application form will be changed to reflect that the applicant should check to see if their equipment is listed on Part A of the ECL before checking Part B. This has the potential of saving the applicant time and money and reducing the required staff review time.

DCAD commented on two specific items on Part A of the ECL; environmental paving and storm-water containment. DCAD is concerned that TCEQ has been too broad in its determinations related to these items, especially for property located at service stations.

The commission appreciates this comment and understands DCAD's concerns over these items. Over the last two years staff has seen a significant increase in the number of applications from service stations which has led staff to review the PEL listed items related to service stations. In response to this review, ECL item M-8 (Environmental Paving) has been modified. This item is now limited to industrial facilities and covers only traffic areas. Only the paving qualifies and the dollar value must be provided on a square foot basis. A plat plan must also be provided. Staff developed new item T-16: Concrete Paving above Underground Tanks and Piping in order to alleviate specific concerns at service stations. Rather than the entire parking and driving area being eligible for a positive use determination, paving is now limited to only the concrete paving which must be installed in order to protect underground tanks and pipes from hydrocarbon leaks or spills. In order to better define the part of the land associated with a storm-water containment structure that is eligible for a positive determination, staff has already incorporated the language suggested by DCAD into the property description. Staff adopted this language as a means of explaining to applicants that only that part of the land that actually houses a piece of pollution control property is eligible for a positive use determination. No changes were made to the rule in response to this comment.

TCUC commented, with the City of Houston's support, that a change in equipment that merely shifts an on-site emission to off-site should not qualify for a use determination. If there was a pollution control benefit then only a partial determination should be made. TCUC cited an example of replacing a gas-fired pump with an electric-fired pump. TCUC suggested that the appropriate determination, if any, should be limited by the productive value of the pump.

The commission appreciates this comment, but respectfully disagrees with the portion of the comment related to the shifting of emissions from one source to another. Under TTC, the TCEQ is charged with evaluating the equipment or project to determine if it meets the definition of pollution control property. Pollution control property as defined includes property that is used for the prevention, monitoring, control, or reduction of air, water, or land pollution. TTC does not require a net reduction in pollution for an item to be eligible for a pollution control property tax exemption. The requirement for an environmental benefit at the site must also be satisfied.

The commission agrees with the second part of the comment related to limiting the exemption to only that portion of the property or project which is related to pollution control or prevention. The appropriate use determination for a project, such as the one in the example, would be one based on determining the amount of additional cost for providing pollution control. Staff refers to this additional cost as the "incremental cost difference". The descriptions for several of the items in the proposed ECL state that the use percentage is based on the incremental cost difference. In reviewing the proposed ECL, staff realized that there was no explanation on how to calculate "incremental cost difference." Accordingly, the following language has been added to the end of

the description paragraph, in Part A of the ECL: "For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature." Also in response to this comment staff modified the description for item A-112 on the ECL, which includes replacements of pumps, seals and valve, to explain that the portion of the equipment which is eligible for exemption is the cost difference between the new equipment and the old equipment.

TCUC commented that a "safety valve" should be added to §17.14 to allow the TCEQ to issue a use determination at a percentage other than that listed on the ECL. This would happen if it was determined that an item filed as a Tier I or Tier IV was entitled to a lesser use percentage, than listed on the ECL. TCUC commented that, under this circumstance, the executive director should require the applicant to re-submit the application under Tier III. From then on all applications for that type of equipment would be considered as Tier III equipment until such time that the ECL could be reviewed under §17.14(b). Harris commented that an amendment should be made to require a Tier III analysis for Tier I or Tier IV if the TCEQ determines that an item does not belong on the ECL.

The commission appreciates these comments, but respectfully disagrees that a "safety valve" other than those provided in TTC, §11.31 and the commission rules are appropriate. All of the categories of equipment listed in Part B of the ECL are listed as having a "variable" percentage. The percentage, if any of items in Part B of the ECL will be determined on a case-by-case basis. Until a percentage is assigned to an item in Part B of the ECL, TCUC's suggested "safety valve" will not work since there is not listed use percentage for the items. The proposed three-year review period for the ECL under the adopted rules will allow enough time for the executive director to evaluate each item on Part B of the ECL to determine if there is a need to remove an item from the list.

Tier I applications are ones which contain property which is listed in Part A of the ECL. Staff agrees that there may be situations where the use determination percentage listed in the ECL may be inappropriate. In order to handle these situations staff has inserted language into the description paragraph in Part A on the ECL. The insertion is before "The commission will review. . ." The new language is: "The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure where, it is appropriate, in order to more accurately reflect the environmental benefit at the site."

The City of Houston stated that when appropriate only partial exemptions should be provided.

The commission appreciates this comment and agrees that when appropriate only a partial determination should be issued. Several sections within Chapter 17 address the issuance of partial determinations. Part A of the ECL contains several items which are listed as partial percentages. Part B of the ECL lists all of the categories as variable (V) to signify that a partial determination calculation is required. To ensure that both staff and applicants first consider if the piece of property or project is only eligible for a partial determination staff has modified Figure: 30 TAC §17.15(a) - Decision Flow Chart. The new language will require that property first undergo a partial analysis review before the appropriate fee Tier Level is determined. No change has been made to the rule as a result of this comment.

Pritchard commented that power supplies installed for the purpose of operating pollution control property should not be eligible for a positive use determination.

The commission appreciates this comment, but respectfully disagrees. From the inception of the program, staff has considered that the definition of pollution control property includes all equipment necessary in order to operate the specific property item. Included in this definition is that portion of any additional utilities required to operate the pollution control property. No change has been made to the rule as a result of this comment.

Pritchard commented that the substitution of an electric motor for an internal combustion engine should not receive a 100% use determination. The reasoning provided is that while this type of substitution might eliminate air emissions the electric motor is a piece of production equipment.

The commission appreciates this comment and agrees that the value of the pollution control aspect of this type of property substitution is the incremental cost difference between the two items. No change has been made to the rule as a result of this comment.

NRG commented that the list of eighteen property categories listed on Part B of the ECL and in HB 3732 does not specifically include the gasifier and air separation units associated with an integrated coal gasification combined cycle facility. They go on to state that the list contains other pollution control items that would be constructed at this facility and that the legislature must have meant to include these items. They express concern that they may be required to file an application containing this property as a Tier I, II, or III application which would "appear to be contrary to the intention of HB 3732, which was designed to provide advance clean energy projects with expeditious processing and review." They raise concerns that as written they are unable to reliably determine the amount of exemption that the project might receive. They request that the TCEQ amend the rules to state that "pollution control components of an advanced clean energy, including an IGCC gasifier and ASU, that are not specifically listed in B-1 through B-17 of the Part B list will be eligible for a use determination review as category B-18 facilities and that use determination requests containing such equipment will be considered Tier IV applications."

The commission appreciates this comment but declines to address the scope of Category B-18 in this rule. The executive director will determine the scope of Category B-18 in guidance documents and on a case-by-case basis when reviewing actual Tier IV applications. Nevertheless, the commission recognizes that pollution control components of an advanced clean energy project that are not specifically listed in B-1 through B-17 of Part B will be eligible for use determination review under Category B-18 and can be included in a Tier IV application.

Comments Relating to §17.15

Sierra commented that additional language needs to be added to §17.15 to clarify the decision flow chart being referenced in Figure: 30 TAC §17.15(b).

The commission appreciates the comment and agrees that Sierra's proposed changes would provide clarity to the appli-

cation review process. The two references on Figure: 30 TAC §17.15(b) to the Decision Flow Chart have been modified to reflect that the references are to the Decision Flow Chart located in §17.15(a).

TxOGA recommended that two changes be made to Figure: 30 TAC §17.15(a): Decision Flow Chart. The first proposed change is to re-word Box 5 to read: "Is an environmental benefit created by pollution control property which is located at the site?" The second proposed change is to change the footnote related to Box 5 to read: "Determine that the pollution control property which creates the environmental benefit is installed and operated at the site. If the property that creates the benefit is not located at the site, then that property is not eligible for a positive use determination."

The commission appreciates the comment, but respectfully disagrees with these proposed changes. The purpose of the Tax Relief Program is to allow industry to meet ever more stringent environmental regulations by installing pollution control or prevention property without seeing an increase in their property taxes. Making the changes recommended by TxOGA would lead to situations where the environmental benefit could happen at a distance from the local community. No changes were made in response to this comment.

Comments Relating to §17.17

AECT commented that "{p}ollution-reducing production equipment is eligible for a partial positive use determination."

Staff agrees and established the Tier III application process to review property that is used partly for pollution control and also for production. No change has been made to the rule in response to this comment.

CCTFT commented that: "Production equipment that reduces pollution is eligible for tax exempt usage determination." Jackson expanded on that statement by stating that the statute specifically allowed property that is "wholly or partly" used for pollution control is eligible for a tax exemption.

The commission appreciates this comment and agrees that production property used partly for the control of air, water, or land pollution is eligible for tax exemption if such property provides an environmental benefit at the site. TTC, §11.31 clearly states that equipment used wholly or partly to control pollution is eligible for a pollution control property tax exemption. From its inception the Tax Relief Program has included a method for obtaining a partial determination. No changes were made to the rule in response to this comment.

Comments Relating to §17.10 Sierra suggested that §17.10(d)(6) be changed to require that the use determination percentage for Tier IV applications be calculated by using the Cost Analysis Procedure (CAP) located in §17.17. Sierra suggested changes to §17.17 which would require use of the CAP for Tier IV applications.

The commission appreciates this comment. Staff considered this issue during the rule development process. The concern is that while the Cost Analysis Procedure provides an accurate use percentage for pieces of property which provide both pollution control and production benefits, staff is not confident that it will work for the categories of property listed in Part B of the ECL. Staff determined that a more appropriate course of action would be to allow applicants to suggest methods for calculating the appropriate percentage. The executive director retains the right to evaluate the proposed methods and determine the most appropriate one. No change was made to the rule as a result of this comment.

STATUTORY AUTHORITY

These amendments and new section are adopted under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. These rules are also adopted under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption. The adopted amendments implement the new subsections added to TTC, §11.31.

§17.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Byproduct--A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

(2) Capital cost new--The estimated total capital cost of the equipment or process.

(3) Capital cost old--This is the cost of comparable equipment or process without the pollution control feature.

(4) Cost analysis procedure--A procedure which uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(5) Decision flow chart--A flow chart which is used to determine if a property or process, which is not listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination as pollution control property.

(6) ePay--The commission's electronic payment system which is located on the TCEQ's web page at www.tceq.state.tx.us.

(7) Equipment and Categories List--A list of property or categories of property used either wholly or partially for pollution control purposes or that is listed in TTC, §11.31(k).

(8) Installation--The act of establishing, in a designated place, property that is put into place for use or service.

(9) Part B decision flow chart--A flow chart which is used to determine if a property or process, which falls under a category listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination or a negative use determination as pollution control property.

(10) Partial Determination--A determination that an item of property or a process is not used wholly as pollution control.

(11) Pollution control property--A facility, device, or method for control of air, water, or land pollution as defined by TTC, §11.31(b).

(12) Production capacity factor--A calculated value used to adjust the value of a partial use determination to reflect capacity considerations.

(13) Tier I--An application which contains property that is in Part A of the figure in §17.14(a) of this title or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List.

(14) Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in §17.14(a) of this title.

(15) Tier III--An application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in §17.14(a) of this title.

(16) Tier IV--An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a) of this title.

(17) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

(18) Use determination letter--The letter sent to the applicant and the chief appraiser which includes the executive director's use determination. In addition to the use determination, the letter will also include at least the following information:

(A) the name of the applicant;

(B) the name and location of the facility;

(C) the property description;

(D) in the case of a Tier III application, a copy of the Cost Analysis Procedure worksheet;

(E) in the case of a Tier IV application, a copy of the worksheet explaining the calculation of the use percentage; and

(F) any other information the executive director deems relevant to the use determination.

§17.10. Application for Use Determination.

(a) In order to be granted a use determination a person shall submit to the executive director:

(1) a commission application form or a similar reproduction and one copy; and

(2) the appropriate fee, under §17.20 of this title (relating to Application Fees).

(b) An application must be submitted for each unit of pollution control property or for each facility consisting of a group of integrated units which have been, or will be, installed for a common purpose.

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date are completed and without regard for any appraisal district deadlines.

(d) Except for paragraph (1) of this subsection, all use determination applications shall contain at least the following:

(1) for Tier I, II, and III use determination applications, the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control property;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

(4) the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the Equipment and Categories List, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this title (relating to Partial Determination), and explaining each of the variables;

(6) if the pollution control property contains equipment which falls under one of the categories listed in Part B of the Equipment and Categories List, located in §17.14 of this title (relating to Equipment and Categories List), a worksheet showing the method and the calculation used to calculate the use percentage;

(7) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(8) if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability;

(9) the name of the appraisal district for the county in which the property is located; and

(10) the appropriate Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the applicable diagram.

§17.14. Equipment and Categories List.

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k).
Figure: 30 TAC §17.14(a)

(b) The commission shall review and update the ECL at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§17.15. Review Standards.

(a) The Decision Flow Chart shall be used for each item of property or process, submitted in a non-Tier IV use determination application to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.

Figure: 30 TAC §17.15(a)

(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Part B Decision Flow Chart when acting on an application containing only property which is listed in Part B of the Equipment and Categories List.

Figure: 30 TAC §17.15(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0177

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CHAPTER 18. ROLLBACK RELIEF FOR POLLUTION CONTROL REQUIREMENTS

30 TAC §§18.1, 18.2, 18.5, 18.10, 18.15, 18.25, 18.30, 18.35

The Texas Commission on Environmental Quality (commission) adopts new §§18.1, 18.2, 18.5, 18.10, 18.15, 18.25, 18.30 and 18.35.

The commission adopts §§18.1, 18.2, 18.5, 18.10, 18.15, 18.30 and 18.35 *without changes* to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6985) and will not be republished. The commission adopts §18.25 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking implements the Rollback Relief for Pollution Control Requirements contained in Texas Tax Code (TTC), §26.045. In 1993 the Texas Legislature, 73rd Session, enacted House Bill 1920, which created TTC, §11.31 and §26.045. TTC, §11.31 established a property tax exemption program for property which is used wholly or partly for pollution control. TTC, §26.045 created a rollback tax relief program for political subdivisions. TTC, §11.31 required the TCEQ to adopt rules to implement the tax relief program. TTC, §26.045 gave the commission the authority to adopt rules but did not require the adoption of rules. In response the commission adopted 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection. Chapter 17 implemented TTC, §11.31. Section 17.1, Scope and Purpose, included political subdivisions in the definition of the applicability of the rule. The commission chose not to adopt a separate rule to implement TTC, §26.045.

In 2007 the 80th Legislature, modified the Rollback Relief for Pollution Control Requirements program (TTC, §26.045) through the passage of House Bill 3732 (HB 3732). The legislature modified TTC, §26.045 by adding three new subsections, (f), (g), and (h). TTC, §26.045(f) requires the commission to adopt by rule a list of 18 categories of property listed in §26.045(f). TTC, §26.045(g) requires the commission to adopt a procedure to review the list at least once every three years. In addition, it allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. TTC, §26.045(h) requires the executive director to review applications, containing only items on the adopted list, and to issue a determination without regard to the information provided in response to TTC, §26.045(c)(1), within 30 days of receipt of the required application documents.

SECTION BY SECTION DISCUSSION

The adopted new §18.1, Scope and Purpose, provides an explanation of the scope and purpose of Chapter 18. The purpose of this chapter is to implement the Rollback Relief for Pollution Control Requirements Program for political subdivisions of this state. The scope of this rule is to provide the framework for political subdivisions to apply to the commission for a determination that a pollution control project qualifies for rollback tax rate relief.

The adopted new §18.2, Definitions, provides definitions for the terms: ePay, Equipment and Categories List, installation, partial determination, permit requirement, pollution control property, Tier I, Tier II, use determination, and use determination letter as these terms are used within Chapter 18. The purpose is to assist in the understanding of the rules and the program.

The adopted new §18.5, Applicability, provides an explanation of the property which is eligible for inclusion under the Rollback Relief Program. It explains that it is the responsibility of executive director to determine the portion of the property which is eligible for Rollback Relief. This section will be used by political subdivisions to determine what property may be eligible under this program.

The adopted new §18.10, Application for Use Determination, provides the information which must be included in an application submitted to the commission. These items include: the appropriate fee, the anticipated environmental benefit from the installation of the property, the estimated cost of the property, the permit requirement being met, a copy of the permit, a partial calculation worksheet if the property is not used wholly for pollution control or if the property is located in Part B of the Equipment and Categories List (ECL), and any other information which the executive director requires. This section will be used by applicants to determine what information they must provide in order to receive a positive determination from the executive director.

The adopted new §18.15, Application Review Schedule, explains the executive director's responsibility once an application has been received. The difference in review time frames between types of applications is explained. This section also explains how positive and negative determinations would be documented. This section will be used by political subdivisions to understand the review process which will occur once the commission has received the application and explains how the executive director's decision will be documented.

The adopted new §18.25, Equipment and Categories List, provides for the ECL, which is a two-part list. Part A is the former predetermined equipment list, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in TTC, §26.045(f). Figure: 30 TAC §18.25(a) is adopted with changes. The three Texas Tax Code citations listed on the figure have been changed to reflect the cor-

rect citation for this program. In order to define the basis for calculating the "incremental cost difference" the following language has been added to the end of the description paragraph, in Part A of the ECL: "For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property that does have the pollution control feature." The following language was also inserted into the description paragraph in Part A of the ECL: "The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site." This language allows for calculation of a use determination percentage which is different from the listed one if it is determined that on this particular application the listed percentage is not appropriate. The following language was added in the description paragraph for Part B of the ECL: "Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list." This will assist applicants in determining the correct Tier level and fee for their application. The description of item A-112 on the ECL was amended to read: "The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item." This was done to clarify that the 100% use determination relates only to the pollution control aspect of the new device. During the consolidation of the previous Predetermined Equipment List into the new ECL staff left five items related to painting and blasting operations off of the list. As a result of discussions on incorporating the incremental cost difference concept into the rule these items have been added to Part A of the list as items A-186 through A-190.

The adopted new §18.25(b) states that the commission must review the ECL at least once every three years. The adopted new §18.25(b)(1) defines the requirements for adding an item to the ECL and §18.25(b)(2) defines the requirements for removing an item from the ECL.

The adopted new §18.30, Partial Determinations, explains how to calculate a partial determination. A partial determination must be requested for any property which is on Part B of the ECL and which is not wholly used for pollution control. Calculations for determining a partial percentage are based on determining the incremental cost difference between the property with the pollution control aspect and similar property without the pollution control aspect. The calculation must be documented and included with the application. This section will be used by applicants to determine how to calculate a determination for property not solely used for pollution control.

The adopted new §18.35, Application Fees, establishes a two-tier fee system for the program. The first level, Tier I is a $150 fee, and is to be used for applications containing only items located in Part A of the ECL, adopted under §18.20. The second level, Tier II is a $500 fee, and is to be used for property listed or contained in the ECL and for applications containing property not used wholly for pollution control. The Tier II fee is higher than the Tier I fee in order to reflect the increased difficulty related to agency review of a Tier II application. Failure to pay the appropriate fee can lead to the rejection of the application. Fees may be remitted by attaching a check or money order to the application and mailing it to the appropriate address or be paid using the ePay system located on the commission's web page.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking implements a Rollback Relief for Pollution Control Requirements program as previously described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES and SECTION BY SECTION DISCUSSION sections. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. This rule does not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action creates a program which is available only to political subdivisions as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Promulgation and enforcement of these adopted rules will be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the adopted regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is not a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC Chapter 505, concerning

rules subject to the Texas Coastal Management Program (CMP), and will, therefore, not require that goals and policies of the CMP be considered during the rulemaking process.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on October 26, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. This was a joint hearing with comments being received on proposed amendments to Chapter 17. The hearing was attended by twenty-three people. Oral comments were provided by four. No oral comments were received with regard to this proposal. The commission received comments from Representative Richard L. "Rick" HardCastle, Representative Tan Parker, Representative Beverly Woolley, Orange County Judge Carl K. Thibodeaux, Harris County Commissioner Sylvia Garcia, Clean Coal Technology Foundation of Texas (CCTFT), Sierra Club-Lone Star Chapter (Sierra), Texas Conference of Urban Counties (TCUC), and one individual.

RESPONSE TO COMMENTS

General Comments Relating to the Scope and Intent of TTC, §26.045(f)

During the proposal agenda the commission directed staff to solicit "comments on whether Part B should be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003." Representative Hardcastle, Sierra, Representative Woolley, Representative Parker, and CCTFT, provided general comments on this issue. Representative Hardcastle commented that the overall intent of HB 3732 is to "ensure that Texas continue to build power plants that are" clean and to make electricity affordable. However, the legislature did not intend to limit the categories of equipment listed in HB 3732 to advanced clean energy projects. Sierra commented that their review of the legislative history of HB 3732 leads them to the conclusion that HB 3732, Section 5 is not tied to clean energy projects. Sierra stated that the TCEQ should perform due diligence to ensure that the use determination includes only the pollution control aspect of the property. Representative Woolley and Representative Parker commented that the purpose of the bill was to provide incentives to electric generation projects. CCTFT supported by TMRA commented that Part B of the ECL should not be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003.

The commission appreciates the comments provided by the commenters regarding the scope and legislative intent of HB 3732. As a state agency, the commission is required to follow the mandates of the legislature regarding implementation of the statutes it enforces. When implementing a statute, the commission gives effect to its "plain language." In implementing HB 3732, staff is mindful that tax exemption statutes "are subject to strict construction." In reviewing the text and legislative history of HB 3732, staff concludes that the categories of equipment listed in it are not limited to advanced clean energy projects. However, as urged by the commenters, and consistent with existing regulations unaffected by HB 3732, the executive director is required to consider: 1) whether each category of equipment listed in TTC, §26.045(f) is used wholly or partly to control air, water or land pollution; and 2) whether the equipment installed in order to meet a requirement of a permit issued by this agency. No changes were made to the rule in response to these comments.

An individual commented that a minimum pollution control threshold should be established by rule and that this threshold be met before a piece of equipment is eligible for consideration for inclusion in the Rollback Tax Rate program.

The commission appreciates these comments, but respectfully disagrees with the need for an additional threshold. The rules establish a two-part threshold. Each piece of property must provide an environmental benefit at the site and must have been installed in response to a requirement in a permit issued by the TCEQ. These thresholds ensure that the installation of the property results in pollution control. The commission has made no changes to the rule in response to this comment.

TCUC, Orange County Judge Thibodeaux and Harris County Commissioner Garcia generally supported the proposed rule changes including the division of the ECL into two parts and the requirement that the Part B equipment be evaluated on an application specific basis.

The commission appreciates the comments. The changing nature of pollution control regulations and equipment has made the operation of the Tax Relief for Pollution Control Property program challenging. The adoption of these rule changes and the re-writing of the program guidelines manual will add increased certainty to the process. No changes were made to the rule in response to these comments.

TCUC, Orange County Judge Thibodeaux and Harris County Commissioner Garcia commented that a "safety valve" should be added to §18.25, Equipment and Categories List (ECL). The "safety valve" would allow the TCEQ to issue a use determination at a percentage other than that listed on the ECL. This would happen if it was determined that an item filed as a Tier I was entitled to a percentage that was different than that listed on Part A of the ECL. Once this occurred all other applications for this item would be required to be submitted as Tier II applications until such time that the ECL could be reviewed under §18.25(b).

The commission appreciates this comment, but respectfully disagrees that a "safety valve" needs to be added to the rule. Tier I applications are ones which contain property which is listed in Part A on the ECL. The executive director agrees that there may be situations where, due to the particular use of the equipment, the use determination percentage listed in the ECL may be inappropriate. In order to handle these situations we have inserted language into the description paragraph in Part A on the ECL. The insertion is before "The commission will review . . ." The new language is: "The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier II partial determination analysis be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may conduct a partial determination analysis, where it is appropriate, in order to more accurately reflect the environmental benefit at the site."

Sierra commented that Figure: 30 TAC §18.25(a) should be revised to inform applicants to review Part A of the ECL before filing under Part B.

The executive director agrees with this suggestion and has amended §18.25(a) accordingly. In addition the program guidelines manual and application form will be changed to reflect that

the applicant should check to see if their equipment is listed on Part A of the ECL before checking Part B. This has the potential of saving the applicant time and money and reducing the required staff review time.

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The new sections are also adopted under Texas Tax Code (TTC), §26.045, which authorizes that the rollback tax rate for a political subdivision of this state be increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under TTC, §26.012(16) to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the commission.

The adopted new sections implement TTC, §26.045.

§18.25. Equipment and Categories List.

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in Texas Tax Code (TTC), §26.045(f).
Figure: 30 TAC §18.25(a)

(b) The commission shall review and update the ECL at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800237
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 7, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 237-0177

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

SUBCHAPTER E. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

34 TAC §19.51, §19.52

The Comptroller of Public Accounts adopts new §19.51 and §19.52, concerning establishing a procedure for soliciting public comment on energy codes, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8296).

The new sections will be under new Subchapter E, Texas Building Energy Performance Standards which implements Senate Bill 12 and House Bill 3693, 80th Legislature, 2007. Senate Bill 12, §3.01, and HB 3693, §11, amend Health and Safety Code, §388.003, to direct the State Energy Conservation Office (SECO) to establish procedures for persons who have an interest in the adoption of energy codes to have an opportunity to comment on newly published editions of the International Energy Conservation Code and the International Residential Code. The new law directs SECO to gather public comments and forward the comments to the Energy Systems Laboratory ("Laboratory") at the Texas Engineering Experiment Station of Texas A&M University System for development of recommendations on the adoption of these energy codes for use in this state.

New §19.51 provides definitions, including definitions of the International Energy Conservation Code and the International Residential Code. New §19.52 outlines a process that SECO will use to solicit comments from the public after publication of new editions of the energy codes.

The Texas Association of Builders (TAB) submitted comments in response to the proposed rulemaking. TAB commented that under Senate Bill 12 and House Bill 3693, SECO is the final arbiter in deciding whether to adopt and substitute as the state energy code the latest published edition of the International Energy Conservation Code or the energy provisions of the latest published edition of the International Residential Code. TAB also commented that only the latest published editions of International Energy Conservation Code or the full energy provisions of the latest published edition of the International Residential Code can be adopted as the state energy codes. In addition, TAB commented that the procedure calls for SECO to consider the written recommendations from the Energy Systems Laboratory at the Texas Engineering Experiment Station of Texas A&M University, and the Laboratory is required to consider comments submitted by stakeholders in developing the Laboratory's recommendations.

While SECO agrees with these comments, no change to the rules are required based on the comments. Senate Bill 12, §3.06, and House Bill 3693, §29, require SECO to adopt rules implementing a procedure for stakeholder participation in the consideration of whether to adopt the latest editions of energy codes, and these rules adequately provide for the required stakeholder participation. Health & Safety Code, §388.003, as amended by Senate Bill 12 and House Bill 3693, provides the authority for SECO to adopt by rule the later editions of the energy codes, if SECO determines that the energy efficiency provisions of the latest published editions of the codes are equivalent to or more stringent than the provisions of the editions that are currently adopted as the energy code in this state. In making its determination, SECO will consider the written recommendations submitted by the Energy Systems Laboratory at the

Texas Engineering Experiment Station of Texas A&M University. SECO will also consider any public comments received during the rulemaking process if later published editions of the codes are proposed for adoption by rule as energy codes in this state.

These rules are adopted under Senate Bill 12, §3.06 and House Bill 3693, §29, 80th Legislature, 2007, which require SECO to adopt rules implementing a procedure for stakeholder participation in the review of energy codes.

The new sections implement Health and Safety Code, §388.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2008.

TRD-200800157
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: February 4, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER D. SUMMARY SUSPENSION

37 TAC §35.52

The Texas Department of Public Safety adopts the repeal of §35.52, concerning Summary Suspension, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8298).

Adoption of the repeal is necessary due to the section having been rendered redundant by Tex. H.B. 2833, Acts 2007, 80th Leg., R.S. (amending Chapter 1702 of the Occupations Code).

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800270
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.70

The Texas Department of Public Safety adopts an amendment to §35.70, concerning General Administration And Examinations, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8298).

Adoption of the amendment to §35.70 is necessary in order to add language to subsection (c) to address the problem of fee payment checks that are returned for "insufficient funds."

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800271
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §35.92

The Texas Department of Public Safety adopts amendments to §35.92, concerning Administrative Hearings, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8299).

Adoption of the amendments to §35.92 are necessary in order to redact language rendered redundant by Tex. H.B. 2833, Acts 2007, 80th Leg., R.S. (amending Chapter 1702 of the Occupations Code).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800272
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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37 TAC §35.94

The Texas Department of Public Safety adopts an amendment to §35.94, concerning Administrative Hearings, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8300).

Adoption of the amendment to §35.94 is necessary in order to provide the authority for default judgments required under the State Office of Administrative Hearings' administrative rule 1 TAC §155.55(d)(2).

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800273
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER K. LETTERS OF AUTHORITY

37 TAC §35.171

The Texas Department of Public Safety adopts amendments to §35.171, concerning Letters of Authority, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8300).

Adoption of the amendments to §35.171 are necessary in order to clarify the scope of its regulations governing security departments of private businesses.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800274
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.181

The Texas Department of Public Safety adopts an amendment to §35.181, concerning General Registration Requirements, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8301).

Adoption of the amendment to §35.181 is necessary in order to clarify the limitations of registration with the Bureau and to redact language rendered redundant by Texas House Bill 2833, Acts 2007, 80th Texas Legislature, Regular Session (amending Chapter 1702 of the Occupations Code).

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800275
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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37 TAC §35.182

The Texas Department of Public Safety adopts an amendment to §35.182, concerning General Registration Requirements, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8302).

Adoption of the amendment to §35.182 is necessary in order to render consistent the deadline related to the submission of new fingerprints with the twelve (12) month grace period currently permitted for renewals.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800276
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER T. DELEGATION OF AUTHORITY

37 TAC §35.301

The Texas Department of Public Safety adopts amendments to §35.301, concerning Delegation of Authority, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8303).

Adoption of the amendments to §35.301 are necessary in order to add new paragraph (6) to subsection (a) to clarify that the Bureau manager is authorized to issue the investigative subpoenas described in §1702.367 of the Occupations Code. In addition, the title of the section has been changed in order to clarify the purpose of the section.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2008.

TRD-200800277
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 424-2135

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Board for Educator Certification (Revised)

Title 19, Part 7

TRD-200800245
Filed: January 18, 2008

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Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Chapter 251, concerning Regional Plans--Standards, of the Texas Administrative Code. This review is conducted in accordance with Texas Government Code, §2001.039.

CSEC has conducted a preliminary review of Chapter 251 and has determined that the reasons for initially adopting the chapter continue to exist.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by e-mail to csecinfo@csec.state.tx.us. Any proposed changes to Chapter 251 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

Chapter 251. Regional Plans--Standards

§251.1. Regional Strategic Plans for 9-1-1 Service.

§251.2. Guidelines for Changing or Extending 9-1-1 Service Arrangements.

§251.3. Use of Revenue in Certain Counties.

§251.4. Guidelines for Accessibility Equipment.

§251.5. Guidelines for 9-1-1 Equipment Management and Disposition.

§251.7. Guidelines for Implementing Integrated Services.

§251.8. Guidelines for the Procurement of Equipment and Services with 9-1-1 Funds.

§251.9. Guidelines for Database Maintenance Funds.

§251.10. Guidelines for Implementing Wireless E9-1-1 Service.

§251.11. Monitoring Policies and Procedures.

§251.12. Contracts for 9-1-1 Services.

§251.13. The Use of the 9-1-1 Database for Emergency Notification Services.

§251.14. General Provisions and Definitions.

TRD-200800201
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: January 17, 2008

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 142 concerning Dispute Resolution--Benefit Contested Case Hearing. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§142.1. Application of the Administrative Procedure Act.

§142.2. Authority of the Hearing Officer.

§142.3. Ex Parte Communications.

§142.4. Delivery of Copies to All Parties.

§142.5. Sequence of Proceedings to Resolve Benefit Disputes.

§142.6. Setting a Benefit Contested Case Hearing.

§142.7. Statement of Disputes.

§142.8. Summary Procedures.

§142.9. Stipulations, Agreements, and Settlements.

§142.10. Continuance.

§142.11. Failure To Attend a Benefit Contested Case Hearing.

§142.12. Subpoena.

§142.13. Discovery.

§142.14. Permission To Use Court Reporter.

§142.16. Decision.

§142.17. Transcript or Duplicate of the Hearing Audiotape.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel.

§142.19. Form Interrogatories.

§142.20. Interlocutory Orders.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 3, 2008 and submitted to Victoria Ortega, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200800299
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 23, 2008

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 150 concerning Representation of Parties Before the Agency--Qualifications for Representatives. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules.

§150.1. Minimum Standards of Practice for an Attorney.

§150.2. Qualification and Authorization of Attorney To Practice before the Commission.

§150.3. Representatives: Written Authorization Required.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 3, 2008 and submitted to Victoria Ortega, Legal Services, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200800300
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 23, 2008

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 165 concerning Rejected Risk: Injury Prevention Services. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules.

§165.1. Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort.

§165.2. Safety Consultation.

§165.3. Formulation and Components of Accident Prevention Plan.

§165.4. Request for Safety Consultation From the Division.

§165.5. Reimbursement of Division for Services Provided to Rejected Risk Employers.

§165.6. Follow-up Inspection of the Policyholder's Premises by the Division.

§165.7. Report of Follow-Up Inspection.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 3, 2008 and submitted to Victoria Ortega, Legal Services, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200800301
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 23, 2008

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Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") file this notice of intention to review and consider the following chapters of Texas Administrative Code, Title 7, Part 8, in their entirety, for readoption, revision, or repeal, as required by Texas Government Code, §2001.039:

Chapter 151 (relating to Home Equity Lending Procedures), comprised of §§151.1 - 151.8, and

Chapter 153 (relating to Home Equity Lending), comprised of §§153.1-153.5, 153.7 - 153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84 - 153.88, and 153.91 - 153.96.

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §11.308 and §15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the rules in 7 TAC, Chapter 151, Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), and Chapter 153. This notice of intention to review relates only to Chapters 151 and 153.

Written comments regarding the review of Chapters 151 and 153 will be accepted for 30 days following the publication of this notice in the *Texas Register*. Any questions or written comments pertaining to this notice of intention to review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or to Betsy Loar, General Counsel, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to sealy.hutchings@occc.state.tx.us or to betsy.loar@tcud.state.tx.us.

The commissions invite your comments on whether the reasons for adoption of these rules continue to exist. In addition, the recent passage of a constitutional amendment affects several interpretations (sections) in Chapter 153. In an upcoming issue of the *Texas Register*, the commissions plan to propose amendments to §153.22, outlining

the lender's obligation to provide copies of certain documents at closing; to §153.51, clarifying the lender's obligation to provide certain disclosures at least one business day prior to closing; and to §153.84, implementing the prohibition on the owner's use of preprinted checks unsolicited by the borrower to obtain a HELOC advance. Comments are also solicited to identify other provisions in Chapter 153 that may require revision or repeal as a result of the recent constitutional amendment.

Any proposed changes to these sections as a result of the rule review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001. Proposed amendments and interpretations are subject to public comment for a reasonable period of at least 30 days prior to final adoption or repeal by the commissions.

TRD-200800303
Leslie L. Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Filed: January 23, 2008

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Texas State Board of Plumbing Examiners

Title 22, Part 17

The Texas State Board of Plumbing Examiners (Board) will review and consider for re-adoption, re-adopt with amendments, or repeal Title 22, Part 17, Chapter 361, Administration. This review is done pursuant to Texas Government Code, §2001.039, which requires agencies to periodically review rules. A preliminary review of this chapter indicates that the reasons for initially adopting these rules continue to exist. The Board will determine whether the reasons for re-adopting these rules continue to exist.

All comments or questions in response to this notice of intention to review may be submitted within 30 days of this proposal being posted in the *Texas Register* to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

Any proposed changes to this chapter as a result of this review will be published in the Proposed Rules section of the *Texas Register* and will be open for public comments for a 30-day period prior to final adoption of any repeal, amendment or re-adoption.

TRD-200800198
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Filed: January 17, 2008

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The Texas State Board of Plumbing Examiners (Board) will review and consider for re-adoption, re-adopt with amendments, or repeal Title 22, Part 17, Chapter 363, Examination and Registration. This review is done pursuant to Texas Government Code, §2001.039, which requires agencies to periodically review rules. A preliminary review of this chapter indicates that the reasons for initially adopting these rules continue to exist. The Board will determine whether the reasons for re-adopting these rules continue to exist.

All comments or questions in response to this notice of intention to review may be submitted within 30 days of this proposal being posted in the *Texas Register* to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

Any proposed changes to this chapter as a result of this review will be published in the Proposed Rules section of the *Texas Register* and will be open for public comments for a 30-day period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200800199
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Filed: January 17, 2008

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Texas Department of Transportation

Title 43, Part 1

In accordance with Texas Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Texas Administrative Code, Title 43, Part 1, Chapter 5, Finance; Chapter 15, Transportation Planning and Programming; and Chapter 27, Toll Projects.

The department will accept comments regarding whether the reasons for adopting these chapters continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200800195
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: January 16, 2008

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of 19 TAC Chapter 232, General Certification Provisions, Subchapter A, Types and Classes of Certificates Issued, and Subchapter B, Certificate Renewal and Continuing Professional Education Requirements, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 232, in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5193).

Relating to the review of 19 TAC Chapter 232, Subchapters A and B, the SBEC finds that the reasons for adoption continue to exist and readopts the rules with changes to update the rules to reflect current law and add specificity to the requirements relating to types and classes of certificates issued, certificate renewal, and continuing professional education requirements.

Following is a summary of the public comments received and corresponding responses.

Comment. The Texas Classroom Teachers Association (TCTA) strongly recommended the deletion of §232.5, relating to the temporary teacher certificate (TTC), since only one certificate has been issued since 2004. The TCTA also commented that they believe the TTC does not fall within the *No Child Left Behind Act's* narrow exception to the requirement of full state certification for teachers.

Board Response. The SBEC disagreed with the comment and retained §232.5 in rule. The No Child Left Behind (NCLB) Program Coordination staff at the Texas Education Agency (TEA) have advised that the TTC meets NCLB requirements.

Comment. The TCTA commented that if §232.5 is retained, language in §232.5(j) should be amended to replace the word "shall" with the word "may."

Board Response. The SBEC agreed with the comment and took action to propose an amendment, as recommended by TEA staff, that would replace the word "shall" with the word "may" in §232.5(j) related to recommending an educator for a certificate. The proposed amendment may be found in the Proposed Rules section of this issue.

Comment. An individual commented that allowances should be made for meeting the continuing professional education (CPE) requirement for certificate holders who take time off from teaching to raise families. The individual also suggested in lieu of allowances that CPE classes be offered free of charge through regional education service centers to certificate holders who take time off to raise families.

Board Response. The SBEC disagreed with the comment and took no action to propose changes that would provide exceptions to the CPE requirement, as recommended by TEA staff. The purpose of continuing professional education is to help teachers positively impact student learning.

The SBEC is proposing amendments to §§232.1-232.6, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870-232.872, 232.880, and 232.890 and the repeal of §232.900, which may be found in the Proposed Rules section of this issue. The SBEC is not proposing an amendment to §232.851.

This concludes the review of 19 TAC Chapter 232.

TRD-200800246

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Filed: January 18, 2008

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The State Board for Educator Certification (SBEC) adopts the review of 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 233, in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5193).

Relating to the review of 19 TAC Chapter 233, the SBEC finds that the reasons for adoption continue to exist and readopts the rules with changes to update the rules to reflect current law and clarify the appropriate certification for specific assignment eligibility for the holders of the Early Childhood-Grade 4, Early Childhood-Grade 6, Grades 4-8, Grades 8-12, and Early Childhood-Grade 12 certificates.

The SBEC is proposing amendments to §§233.1-233.9 and 233.11-233.14, which may be found in the Proposed Rules section of this issue. The SBEC is not proposing an amendment to §233.10.

The SBEC received no comments related to the rule review of 19 TAC Chapter 233.

This concludes the review of 19 TAC Chapter 233.

TRD-200800247

Raymond Glynn

Acting Deputy Commissioner, School District Leadership and Educator Quality, Texas Education Agency

State Board for Educator Certification

Filed: January 18, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §17.14(a)

Equipment and Categories List
Part A

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site. The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature. Part A was formerly referred to as the Predetermined Equipment List. Part A is a list adopted under TTC, §11.31(g).

Air Pollution Control Equipment

No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				

No.	Media	Property	Description	%
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. Stripper associated with product or by-product improvement does not qualify.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50
A-44	Air	Halogen Replacement Projects	All necessary equipment needed to replace the Halogen in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required to demonstrate compliance with emission limitations of regulated air contaminants. (Including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide (NO_x) emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines.	100

No.	Media	Property	Description	%
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NOx formation.	20
A-88	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO_x	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NOx emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO_x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection	Use of a sorbent for flue gas desulfurization or NOx	100

No.	Media	Property	Description	%
		Systems	control.	
Volatile Organic Compounds (VOC) Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
Mercury Control				
A-133	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, particulate collection devices, etc. needed for the equipment to function.	100
A-134	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-136	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives which can be added to the flue gas or directly to the fuel.	100
A-138	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	100
A-141	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive which is then removed in a particulate removal device.	100
Control of Sulfur Oxides				
A-168	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. - used to collect air contaminants and route them to a control device.	100

No.	Media	Property	Description	%
A-181	Air	Stack Modifications	Construction of stacks extensions. In order to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack in order for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	100
A-185	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-186	Air	Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control)	The incremental cost difference between the new paint booth and the replaced paint booth.	100
A-187	Air	Paint Spray Booth Attached to a Final Control Device (New Construction)	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-188	Air	Powder Coating System - Installed to replace an existing paint booth	The incremental cost difference between the Powder Coating System and the Paint Spray Booth which was replaced.	100
A-189	Air	Powder Coating System - New construction	Powder recovery system.	100
A-190	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
Dry Cleaning Related Equipment				
A-200	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60
A-201	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-202	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60
A-203	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-204	Air	Refrigerated Vapor Condenser. (Includes only the components that recover the vapors)	A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90
A-205	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100
A-206	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100

Wastewater Pollution Control Equipment

No.	Media	Property	Description	%
		Solid Separation and De-watering		
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Hydrocarbon.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
		Disinfection		
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or waste water.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of waste water.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
		Biological Systems		
W-30	Water	Activated Sludge	Biologically activating carbon matter in waste water by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100

No.	Media	Property	Description	%
			Other Equipment	
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from waste water. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
			Control/Monitoring Equipment	
W-70	Water	pH Meter, Dissolved Oxygen. Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO_2) release in wastewater treatment systems.	100

No.	Media	Property	Description	%
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles which leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. in waste treatment system (Does not include fire alarms).	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	100
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit. (e.g., below the treatment zone of a land treatment unit, etc.)	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit. (e.g., detection monitoring systems, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize	100

No.	Media	Property	Description	%
			lateral migration of pollutants in soils and ground water.	
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	100
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities. (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100
M-2	Air/Land	Hazardous Air Pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum	100

No.	Media	Property	Description	%
		Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	
M-3	Air/Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-11	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion	100

No.	Media	Property	Description	%
			of metal tanks and piping.	
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-23	Water /Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
Release Detection for Tanks and Piping				

T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-25	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

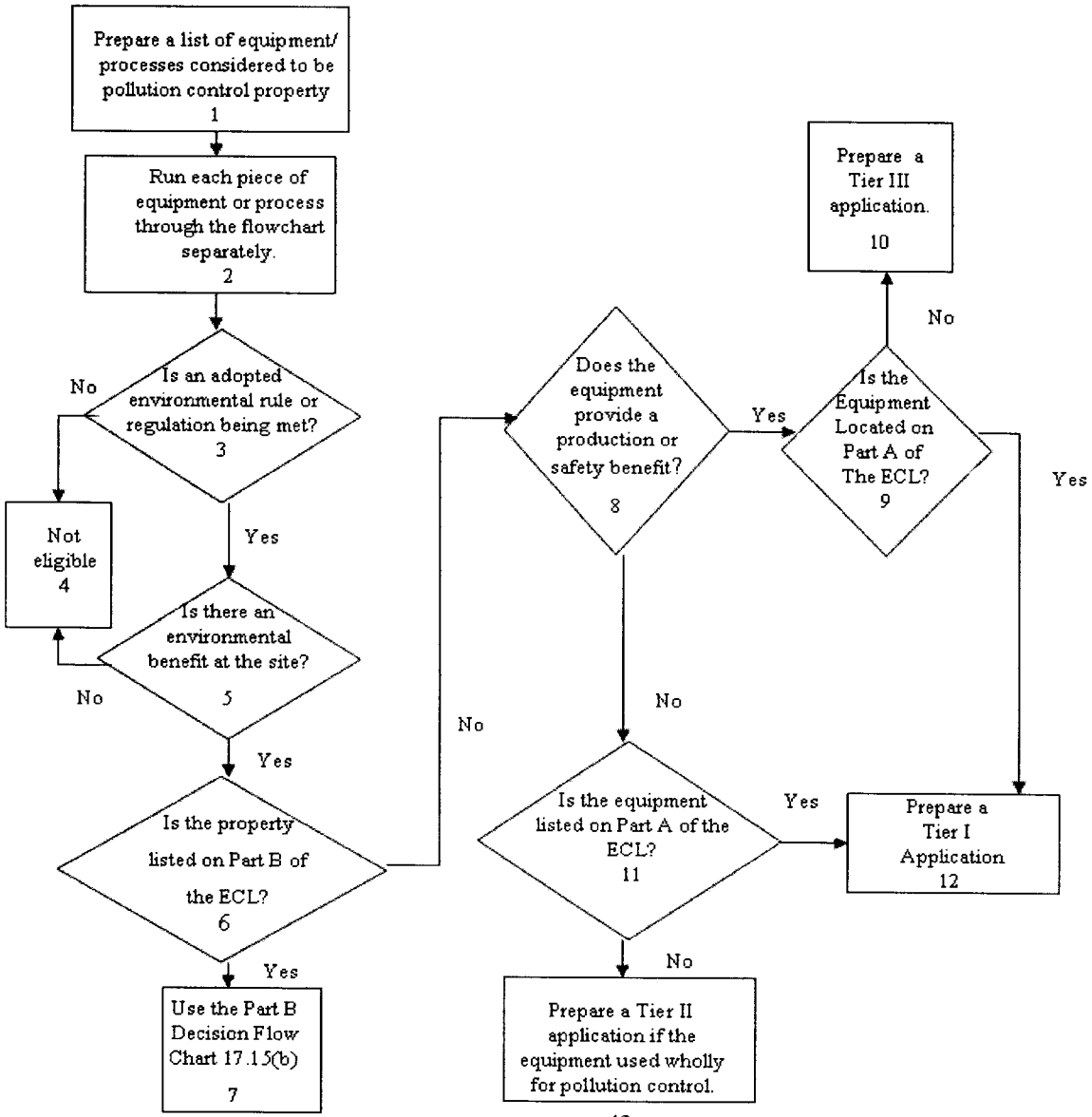
Part B of the Equipment and Categories List is a list of the pollution control property categories set forth in §11.31(k) of the Texas Tax Code. These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a "V", for variable, and must be calculated on an application specific basis. Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list. Part B is a list adopted under TTC, §11.31(k).

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion	V

	decarbonization, and coal flow balancing technology	
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	V
B-16	If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state	V
B-17	Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste	V
B-18	Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant	V

Figure: 30 TAC §17.15(a) **Decision Flow Chart**

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5. ECL means the Equipment and Categories List adopted under Texas Tax Code, §11.31(g).



Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

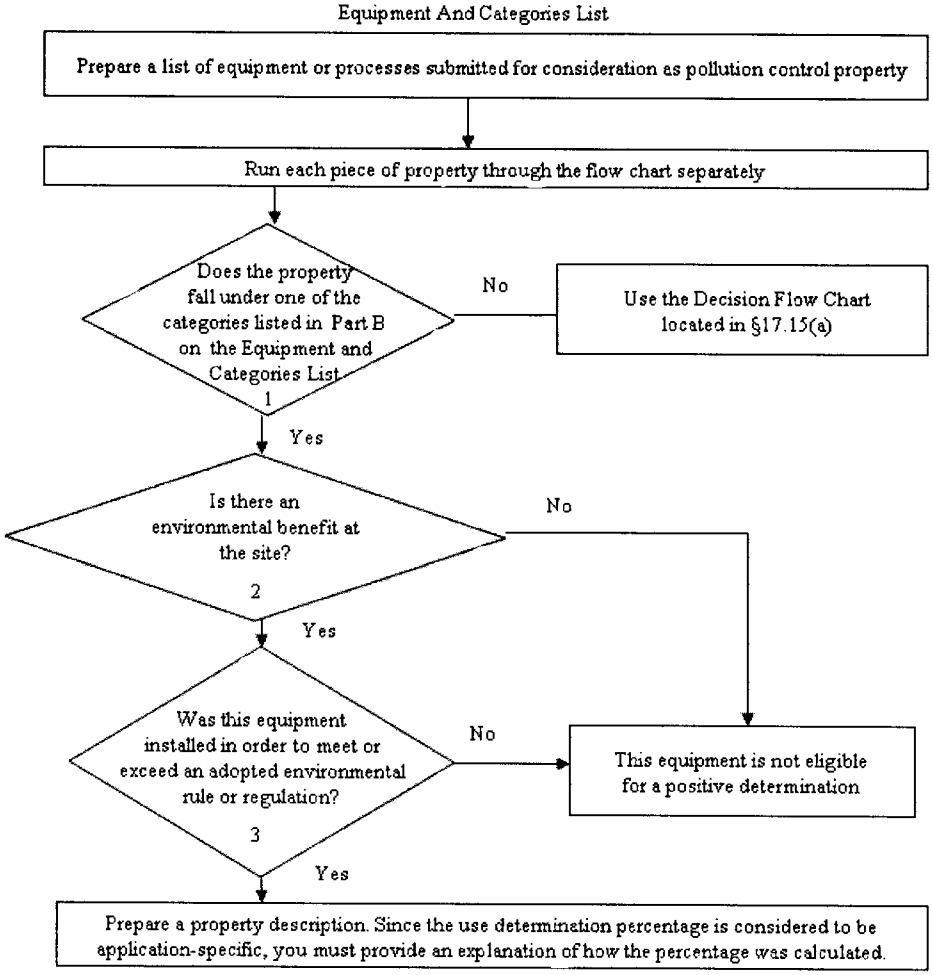
Where:

- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
- Determine the environmental benefit that this property provides at the site where it is installed.
- Determine if the property is listed on Part B of the ECL
- Determine if the equipment is only partly used for pollution control. If it is used only partly, and is not listed on Part A of the Equipment and Categories List (ECL), then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.
- If the equipment is listed in Part A on the ECL, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application
- If the equipment is not in Part A on the list prepare a Tier II application.

Figure: 30 TAC §17.15(b)

PART B DECISION FLOW CHART

For Applications Containing Only Equipment listed in Part B on the Equipment And Categories List



Where:

1. Determine if the property is listed in Part B on the Equipment and Categories List. If not, then use the Decision Flow Chart located in §17.15(a).
2. Is there an environmental benefit at the site? If the answer is no then the property is not eligible for a positive use determination.
3. Determine if the equipment was installed in order to meet or exceed an adopted environmental rule or regulation. If the answer is no then the property is not eligible for a positive use determination.

Figure: 30 TAC §18.25(a)

Equipment and Categories List
Part A

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier II partial determination analysis be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may conduct a partial determination analysis, where it is appropriate, in order to more accurately reflect the environmental benefit at the site. The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property that does have the pollution control feature. Part A was formerly referred to as the Predetermined Equipment List. Part A is a list adopted under Texas Tax Code (TTC), §26.045(e).

Air Pollution Control Equipment

No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				

No.	Media	Property	Description	%
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. Stripper associated with product or by-product improvement does not qualify.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50
A-44	Air	Halogen Replacement Projects	All necessary equipment needed to replace the Halogen in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required to demonstrate compliance with emission limitations of regulated air contaminants. (Including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines.	100

No.	Media	Property	Description	%
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NO_x formation.	20
A-88	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO_x.	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NO_x emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO_x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO_x including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NO_x and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection	Use of a sorbent for flue gas desulfurization or NO_x	100

No.	Media	Property	Description	%
		Systems	control.	
Volatile Organic Compounds Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
Mercury Control				
A-133	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, particulate collection devices, etc. needed for the equipment to function.	100
A-134	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-136	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives which can be added to the flue gas or directly to the fuel.	100
A-138	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	100
A-141	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive which is then removed in a particulate removal device.	100
Control of Sulfur Oxides				
A-168	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. - used to collect air contaminants and route them to a control device.	100

No.	Media	Property	Description	%
A-181	Air	Stack Modifications	Construction of stacks extensions. In order to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack in order for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	100
A-185	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-186	Air	Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention control)	The incremental cost difference between the new paint booth and the replaced pain booth	100
A-187	Air	Paint Spray Booth Attached to a Final Control Device (New Construction)	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-188	Air	Powder Coating System - Installed to replace an existing paint booth.	The incremental cost difference between the Powder Coating System and the Paint Spray Booth which was replaced.	100
A-189	Air	Powder Coating System - New Construction	Powder recovery system.	100
A-190	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
Dry Cleaning Related Equipment				
A-200	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60
A-201	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-202	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60
A-203	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-204	Air	Refrigerated Vapor Condenser. (Includes only the components that recover the vapors.)	A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90
A-205	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100
A-206	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100

Wastewater Pollution Control Equipment

No.	Media	Property	Description	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Hydrocarbon.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or waste water.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of waste water.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
Biological Systems				
W-30	Water	Activated Sludge	Biologically activating carbon matter in waste water by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100

No.	Media	Property	Description	%
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from waste water. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO_2) release in wastewater treatment systems.	100

No.	Media	Property	Description	%
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100 %
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles which leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. in waste treatment system (Does not include fire alarms).	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	100
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit. (e.g., below the treatment zone of a land treatment unit, etc.)	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit. (e.g., detection monitoring systems, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize	100

No.	Media	Property	Description	%
	Water		lateral migration of pollutants in soils and ground water.	
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	100
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities. (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100
M-2	Air/ Land	Hazardous Air Pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum	100

No.	Media	Property	Description	%
		Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant.	Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-11	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion	100

No.	Media	Property	Description	%
			of metal tanks and piping.	
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-23	Water /Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
Release Detection for Tanks and Piping				

T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-25	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

Part B of the Equipment and Categories List is a list of the pollution control property categories set forth in TTC, §26.045(f). These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a "V", for variable, and must be calculated on an application specific basis. Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list. Part B is a list adopted under TTC, §26.045(f).

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super-heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion	V

	decarbonization, and coal flow balancing technology.	
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	V
B-16	If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.	V
B-17	Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste.	V
B-18	Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.	V

Figure: 30 TAC Chapter 30--Preamble

Account Number: 0468	**1st Year**	**2nd Year**	**3rd Year**	**4th Year**	**5th Year**
Revenue Increase (Decrease) to State for Irrigation Inspector License	$33,300	$11,100	$5,550	$30,525	$13,875
Revenue Increase (Decrease) to State for Irrigation Technician License	$188,700	$77,700	$44,400	$158,175	$63,825
Estimated Number of Irrigation Inspector Licenses Issued	300	100	50	50	50
Estimated Number of Irrigation Inspector Licenses Renewed	0	0	0	225	75
Estimated Number of Irrigation Technician Licenses Issued	1,700	700	400	150	50
Estimated Number of Irrigation Technician Licenses Renewed	0	0	0	1,275	525

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Qualifications

Notice is hereby given of a Request for Qualifications (RFQ) by Texas State Affordable Housing Corporation (TSAHC) to financial institutions that can provide trustee services for the Corporation's Multifamily Private Activity Bond Program (the "Program"). Financial institutions interested in providing trustee services must submit all of the materials listed in this Request for Qualifications (the "RFQ"), which can be found on the Corporation's website at www.tsahc.org.

The deadline for submissions in response to this RFQ is Friday, February 22, 2008. No proposal will be accepted after 4:00 p.m. on that date. Neither faxed nor emailed responses will be accepted. For questions or comments, please contact David Danenfelzer at (512) 477-3555 ext. 403 or by email at ddanenfelzer@tsahc.org.

TRD-200800292
David Long
President
Texas State Affordable Housing Corporation
Filed: January 23, 2008

♦ ♦ ♦

Office of the Attorney General

House Bill 3430 Small Business Impact Proposed Guidelines

The 80th Legislature adopted House Bill (HB) 3430 which, among other things, requires that, as part of the rulemaking process, state agencies must prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses. HB 3430 also required that the Attorney General, in consultation with the Comptroller, prepare these guidelines to assist agencies in determining a proposed rule's potential adverse economic effects on small businesses and in identifying and evaluating alternative methods.

The Office of the Attorney General prepared Interim Guidelines in September 2007 and distributed them to state agencies and other interested parties for review and comment. These Proposed Guidelines have been prepared based on the comments received. These Proposed Guidelines will be published in the *Texas Register* for additional public comment, and the Final Guidelines will be developed in response to any further comments received.

These Proposed Guidelines include the following appendixes: Text of §2006.002 as amended, a Sample Economic Impact Statement and Regulatory Flexibility Analysis, and a Sample Statement Regarding the Public Health, Safety, and Welfare.

I. REQUIREMENTS

The requirements for an Economic Impact Statement and Regulatory Flexibility Analysis are set forth under section 3 of HB 3430, which amends Texas Government Code §2006.002. Section 2006.002 as amended by HB 3430 is set out in an appendix to these guidelines.

HB 3430 requires that before adopting a rule that may have an adverse economic effect on small businesses a state agency shall prepare an Economic Impact Statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule. An agency's consideration of alternative methods must be set forth in a Regulatory Flexibility Analysis (§2006.002(c)). The Regulatory Flexibility Analysis must consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business (§2006.002(c-1)). Each agency must assess for itself the quality and quantity of the data needed to prepare an Economic Impact Statement for a proposed rule.

The Economic Impact Statement and Regulatory Flexibility Analysis must be included in the notice of the proposed rule (§2006.002(d)). Copies of the notice of the proposed rule that is submitted to the Texas Register must also be provided to the Senate and House standing committees that are charged with reviewing the proposed rule (§2006.002(d)).

Section 2006.002, as amended by HB 3430, applies only to a rule that is adopted on or after January 1, 2008. A rule adopted before that date is governed by the law in effect when the rule was adopted, and the former law is continued in effect for that purpose. In accordance with the Administrative Procedure Act, Texas Government Code Ch. 2001, the use of the word "adopted" indicates that this requirement applies to the date that a rule is actually adopted by a state agency, not to the date when an adopted rule is filed with the Secretary of State. *See* Texas Government Code §2001.033 and §2001.036.

II. OUTLINE OF REQUIRED STEPS

Is an Economic Impact Statement required?

Would the proposed rule have:

1) an adverse economic effect;

2) on small businesses?

If the answer to both question is yes, then an Economic Impact Statement must be prepared that includes:

1) An estimation of the number of small businesses subject to the proposed rule;

2) A projection of the economic impact of the proposed rule on small businesses; and,

3) A Regulatory Flexibility Analysis, which reflects an agency's consideration of the alternative methods described in the EIS, must include:

a) Consideration of the use of regulatory methods that will achieve the purpose of the proposed rule while minimizing adverse impacts on small businesses, if consistent with the health, safety, and environmental and economic welfare of the state; and,

b) An analysis of several proposed methods of reducing the adverse impact of the proposed rule on small businesses.

Notice and Comment is required:

Include the Economic Impact Statement and the Regulatory Flexibility Analysis in the notice of the proposed rule in the *Texas Register.*

Provide copies to the standing committees of each house of the legislature that is charged with reviewing the proposed rule.

Respond to any comments on the Economic Impact Statement and Regulatory Flexibility Analysis as required in any adoption preamble.

III. WHAT IS A SMALL BUSINESS?

As provided under §2006.001(2), as amended by HB 3430, a small business is an entity that is:

1) for profit,

2) independently owned and operated, and

3) has fewer than 100 employees or less than $6 million in annual gross receipts.

Each of these three elements should be met in order for an entity to qualify as a small business under HB 3430. A business must be operated for profit. Consequently, rules that apply exclusively to non-profit and governmental entities need not comply with HB 3430.

Independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities or otherwise subject to control by other entities and entities that are not publicly traded. To qualify as a small business, an entity must have either fewer than 100 employees or less than $6 million in annual gross receipts. Practically, the standard of fewer than 100 employees will be the easiest to determine and implement. Data on an entity's annual gross receipts is generally not publicly available.

In some cases, individual persons licensed by an agency might be considered to be small businesses. Whether an individual licensee might be a small business will depend upon the nature of the regulated profession or trade and the governing statute. An agency should look to see if any of its licensees might practice as small businesses.

IV. ADVERSE ECONOMIC EFFECT

Section 2006.002(c) requires that "[b]efore adopting a rule that may have an adverse economic effect on small businesses, a state agency shall prepare" an Economic Impact Statement and Regulatory Flexibility Analysis. One of an agency's first inquiries should be whether a proposed rule may have an adverse economic effect on small businesses.[1]

If a proposed rule will not have an adverse economic effect on small businesses, an agency should include a finding to that effect in the notice of the proposed rule. An agency is not required to prepare an Economic Impact Statement and Regulatory Flexibility Analysis if there is no adverse economic effect.[2] An agency should, however, provide a reasoned justification for why an Economic Impact Statement and Regulatory Flexibility Analysis is not required for a proposed rule.[3]

Adverse economic effects can include the costs to a small business for compliance with a proposed rule and may include a loss of business opportunities as the result of regulatory limits. What constitutes an adverse economic impact may depend upon the characteristics of a regulated industry and upon the effect of a proposed rule. However, an agency need only consider direct adverse economic effects. An agency need not consider indirect economic effects, such as impacts on small businesses that are not regulated entities.[4] Generally, there is no need to examine the indirect effect of a proposed rule on entities outside of an agency's regulatory jurisdiction. However, an agency should carefully evaluate a proposed rule where indirect effect may be of particular concern, such as the impact of a proposed rule on other regulated entities.

V. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Agencies should make a reasonable, good-faith effort to prepare an Economic Impact Statement and Regulatory Flexibility Analysis that will provide the public and the affected small businesses with information about the potential adverse effects of the proposed rule and about potentially less-burdensome alternatives.[5] Substantial compliance requires that the Economic Impact Statement provide interested persons with an opportunity to comment intelligently on the basis for an agency's projected economic impact of a proposed rule on small businesses.[6]

An agency should individually analyze the impacts of each proposed rule or rule amendment. While an agency may be able to take advantage of the data and analysis compiled as part of an Economic Impact Statement for a prior rulemaking, the agency should confirm that the data is appropriate for each proposed rule.

A. Determining the Number of Small Businesses

To know whether a proposed rule affects a number of small businesses, an agency must first know how many regulated entities exist and which are small businesses. For some agencies that regulate only one industry or profession, this may require determining only how many of the businesses that the agency regulates meet the standards for small businesses. For some agencies, most of their regulated individuals and entities, if not nearly all, may qualify as small businesses.

The most readily determinable factor will be whether a business has less than 100 employees. If a business does, then it is clearly a small business and an economic impact statement and regulatory flexibility analysis should be prepared. With regard to businesses with more than 100 employees, but less than $6 million in annual gross receipts, further information may be obtained by consulting.

The Comptroller of Public Accounts has developed a Web site to assist agencies in determining a proposed rule's potential adverse economic effect on small businesses (https://fmx.cpa.state.tx./fmx/legis/eco-effect/). Additional information on employers with fewer than 100 employees is available from the Texas Workforce Commission's TRACER Web site (www.tracer2.com).[7]

An agency that regulates only one industry or profession may only need to conduct this analysis once to determine the number and/or percentage of small businesses that it regulates. That analysis can then be used in future rulemakings; however, the analysis should be reviewed and updated periodically to reflect changes in the number of regulated businesses or changes to the agency's jurisdiction.

Agencies that adopt rules affecting multiple industries will likely need to determine for each proposed rule the number of small businesses that may be affected. The first step in this analysis would be to identify the industry sectors to be regulated. In the past, many agencies used the Standard Industrial Classification (SIC) codes to categorize regulated businesses on an industry-by-industry basis. In 1999, the SIC system was replaced by the North American Industry Classification System (NAICS), which breaks down industry sectors in much greater detail.

For a grant program or other voluntary program, an agency can develop an estimate of the number of small businesses affected by anticipating the potential number of applicants and potential number of grant recipients. The number of applicants from past years of a program could be used as examples, or the number of applicants for similar programs can be used as the basis for an estimate. An agency should strive to

provide some reasoned explanation for an estimate of the number of applicants and the methodology and quality of the data used to derive the estimate.

An agency does not need to provide an exact accounting of the number of small businesses that a proposed rule may affect.[8] The number of businesses may be reported as an approximation, such as "more than," or in a range such as: 1-100, 101-500, 501-1000, 1001-5000, 5001-10,000, or 10,000+.

In some instances, an agency may regulate businesses that are located outside of Texas. In such a case, an agency should look to see whether any of these businesses are small businesses that should be included in the number that the proposed rule might affect. However, an agency need only assess the general adverse effect of a proposed rule on small businesses doing business in Texas; it need not perform a detailed analysis of how a proposed rule might have a different effect, if any, on small businesses that are located outside of Texas.

B. Projecting the Economic Impact

Under §2006.002(c)(1), an agency is required to project the economic impact of a proposed rule on small businesses. Every rule is different. The level, scope, and complexity of analysis may vary significantly depending on the characteristics and composition of the industry or small-entity sectors to be regulated. The projection need only assess the potential adverse economic effects on small businesses.

Agencies are also required, under §2006.002(f), to reduce the adverse effect of rules on micro-businesses. Under §2006.001(1), a micro-business is defined as an entity with not more than 20 employees. Consequently, the number of micro-businesses in a regulated industry or profession is a subset of the number of small businesses. In some instances, however, a proposed rule may have a disparate effect on micro-businesses as compared to small businesses. An agency's projection of economic impact should include an analysis as to whether a proposed rule may have an adverse effect on micro-businesses distinct from any potential adverse effect on small businesses.

Examples of the costs associated with a proposed rule may include:

recordkeeping;

reporting;

required professional expertise, such as lawyer, accounting, or engineering;

capital costs for any required equipment;

costs for modifying any existing processes and procedures;

lost sales and profits resulting from the proposed rule;

changes in market competition as a result of the proposed rule and its effect on the balance between specific submarkets;

extra tax costs;

additional employees that may need to be hired; and

required fees.

C. Regulatory Flexibility Analysis

In preparing the Regulatory Flexibility Analysis, as required under §2006.002(c)(2), an agency must consider alternative methods of achieving the purpose of the proposed rule. As provided under §2006.002(c-1), the alternatives should:

be consistent with the health, safety, and environmental and economic welfare of the state;

accomplish the objectives of the rule; and

minimize adverse impacts on small businesses.

An agency must also include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business. The Regulatory Flexibility Analysis and Economic Impact Statement can be combined into a single report.

1. Exception for the Public Health, Safety, and Welfare

Under §2006.002(c-1), an agency must "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small business." An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses would not be protective of the health, safety and environmental and economic welfare of the state.[9] One example clearly fits within this exception. Agencies may be required to adopt as rules specific fees or specific standards and procedures under a legislative or federal mandate. In such a situation, the mandated language may be considered *per se* consistent with the health, safety, or environmental and economic welfare of the state and the agency need not consider other regulatory methods. Other situations may not be as clear, and each agency should exercise professional discretion and expertise in making this determination.

2. Alternatives Analysis

The kinds of alternatives that are possible will vary based on the particular regulatory objective and the characteristics of the regulated industry. Examples of alternatives that an agency may identify and evaluate include:

Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities.

Clarification, consolidation, or simplification of compliance and reporting requirements for small entities.

Use of performance rather than design standards.

Implementation of different requirements or standards for micro-businesses.

Exemption for certain or all small entities from coverage of the rule, in whole or in part.

Adopting different standards for the size of businesses.

Modifying the types of equipment that are required for large and small entities.

The effect of not adopting the proposed regulation, a "no action" alternative.

An agency must include in the analysis several methods of reducing the adverse impact of a proposed rule on a small business. A common meaning of "several" is "more than two but fewer than many," with "many" meaning "a large number of persons or things."

VI. REVIEW AND COMMENT ON THE ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Under §2006.002(d), an agency must "include the economic impact statement and regulatory flexibility analysis as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register." Thus, the Economic Impact Statement and Regulatory Flexibility Analysis should be included in the preamble for a proposed rule along with other required findings such as the fiscal note and note on public benefits and costs required under the Administrative Procedure Act (APA), Government Code §2001.024(a)(4)&(5).[10]

Under §2006.002(d), an agency must also provide copies of the proposed rule and preamble to the standing committee of each house of the Legislature that is charged with reviewing the proposed rule. Typically, these will be the legislative committees that have primary jurisdiction over the agency or over the area of law or the subject matter under which the rule is adopted.

While the Economic Impact Statement and Regulatory Flexibility Analysis are not required to be included in the preamble for the rule adoption, an agency should respond to any comments received regarding the Economic Impact Statement and Regulatory Flexibility Analysis as required under the APA, §2001.029.

VII. QUESTIONS

For further information or a response to any questions that you may have regarding these guidelines, please contact:

Barbara B. Deane

Chief, Administrative Law Division

OFFICE OF THE ATTORNEY GENERAL

(512) 936-1836

(512) 474-1062 (fax)

barbara.deane@oag.state.tx.us

Jeb Boyt

Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL

(512) 475-4200

(512) 474-1062 (fax)

jeb.boyt@oag.state.tx.us

Don Hoyte, Ph.D.

Manager, Regional Fiscal Analysis

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

(512) 475-0446

(512) 475-0363 (fax)

don.hoyte@cpa.state.tx.us

Mark Hughes

Director, Labor Market and Career Information

TEXAS WORKFORCE COMMISSION

(512) 490-4800

mark.hughes@twc.state.tx.us

Footnotes

[1] Courts have not interpreted the meaning of "adverse effect" under §2006.002. *See Unified Loans, Inc. v. Pettijohn*, 955 S.W.2d 649 (Tex. App.--Austin 1997, no pet.). WEBSTER'S DICTIONARY defines "adverse" as "1 : acting against or in a contrary direction : Hostile <hindered by ~ winds> 2 : opposed to one's interests : Unfavorable <an ~ verdict>." 59 (9th New Collegiate ed. 1990).

[2] *Texas Shrimp Ass'n v. Texas Parks & Wildlife Dep't*, 2005 WL 1787453, at *6 (Tex. App.-Austin 2005, no pet.) (not designated for publication) ("The requirements in section 2006.002 are not absolute, but rather are conditioned on the adoption of 'a rule that would have an adverse economic effect on small businesses'," quoting the text of §2006.002(c) as it existed at the time).

[3] An objective of statutes such as §2006.002 "is to afford adequate notice--to place the agency's assessment before interested persons in advance in order that (1) interested persons might comment intelligently on the proposed rules and (2) the agency might exercise intelligently its responsibilities in arriving at the contents of the rule as finally adopted, in stating reasons for and against adoption, and in formulating the required contents of the adopting order, including a 'reasoned justification' for the rule." *Unified Loans*, 955 S.W.2d at 652.

[4] Courts have held that the federal Regulatory Flexibility Act, 5 U.S.C. §§601-612, applies only to direct economic impacts. *See Mid-Tex. Elec. Coop v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (Regulations for generating utilities did not need to consider potential adverse effect on transmission utilities); *American Trucking Ass'ns v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999) (EPA's national ambient air quality standards did not have a direct impact on small entities which were regulated directly through state implementation plans), *aff'd in part and rev'd in part on other grounds*, *Whitman v. American Trucking Ass'ns*, 531 I/S/ 457 (2001); *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996) (Regulatory flexibility analysis provision applies only to small entities that are subject to the requirements of the rule and the agency had no obligation to analyze the effects on entities which it did not regulate).

[5] *See Southern Offshore Fishing Assoc. v. Daley*, 995. F.Supp. 1411, 1437 (M.S. Fla. 1998) (interpreting the federal requirement to examine impacts on small entities). One court required that a federal agency consider comments not submitted during the formal notice and comment period because the agency's proposed rule did not properly inform the regulated industry that its interests were at stake. *Northwest Mining Assoc. v. Babbitt*, 5 F.Supp.2d 9 (D.D.C. 1998).

[6] *See Unified Loans*, 955 S.W.2d at 652-654.

[7] Additional labor market and other information may be found at www.twc.state.tx.us/customers/rpm/rpmsub3.html.

[8] *See* U.S. SMALL BUSINESS ADMINISTRATION, OFFICE OF ADVOCACY, STATE GUIDE TO REGULATORY FLEXIBILITY FOR SMALL BUSINESSES (March 2007) (Examining the regulatory flexibility programs of Rhode Island, South Dakota, and other states).

[9] Protection of the public health, safety, and welfare is part of the inherent power of a sovereign state. *See* BLACK'S LAW DICTIONARY 1178 (7th ed. 1999).

[10] The previous text of §2006.002 constituted "any other statement required by law" which must be included in the notice of a proposed rule as described under §2001.024(a)(8) of the APA. *Unified Loans*, 955 S.W.2d at 651.

Appendix

§2006.002. Adoption of Rules with Adverse Economic Effect

(a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.

(b) To reduce an adverse effect on small businesses, an agency may:

(1) establish separate compliance or reporting requirements for small businesses;

(2) use performance standards in place of design standards for small businesses; or

(3) exempt small businesses from all or part of the rule.

(c) Before adopting a rule that may have an adverse economic effect on small businesses, a state agency shall prepare:

(1) an economic impact statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule; and

(2) a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule.

(c-1) The analysis under Subsection (c) shall consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business.

(d) The agency shall include the economic impact statement and regulatory flexibility analysis as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the *Texas Register* and shall provide copies to the standing committee of each house of the legislature that is charged with reviewing the proposed rule.

(e) This section does not apply to a rule adopted under Title 2, Tax Code.

(f) To reduce an adverse effect of rules on micro-businesses, a state agency shall adopt provisions concerning micro-businesses that are uniform with those outlined in Subsections (b)-(d) for small businesses.

(g) The attorney general, in consultation with the comptroller, shall prepare guidelines to assist a state agency:

(1) in determining a proposed rule's potential adverse economic effects on small businesses; and

(2) in identifying and evaluating alternative methods of achieving the purpose of the proposed rule.

Example Economic Impact Statement and Regulatory Flexibility Analysis

The Board has approximately 5,000 doctor of chiropractic licensees and 3,000 registered facilities, and nearly all of these entities are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be neutral to positive for licensees and clinics in that licensees will be able to more effectively use their practice time by delegating approved tasks to qualified assistants when appropriate. In preparing this proposed rule, the Board considered several alternative methods for achieving the purposes of this rule amendment. The Board considered requiring, under proposed subsection (j), that each person performing treatments sign the patient records, but this was rejected as excessively burdensome recordkeeping. The Board considered not modifying the standards for "qualified and properly trained" in proposed subsection (d), but the Board decided that the public welfare would benefit from clearer standards. The Board considered adopting more specific standards regarding the required education, training, and skills of personnel, but the Board decided instead that it would be easier for licensees to implement the general standards included in the proposed rule under subsection (d).

Sample Statement Regarding the Public Health, Safety, and Welfare

The Agency estimates that there are approximately 7,500 widget manufacturers in Texas and that approximately nine out of ten of these manufacturers are small businesses and that three out of ten are micro-businesses. The Agency estimates that the projected economic impact of this proposed rule will be increased costs of compliance for safety training and reporting. Under §2006(c-1), an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state. The Agency has developed this proposed rule in accordance with a legislative mandate and in compliance with the requirements of the regulations of the U.S. Environmental Protection Agency. Consequently, any variance from the federal standards would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

TRD-200800279
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 18, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 11, 2008, through January 17, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 23, 2008. The public comment period for this project will close at 5:00 p.m. on February 22, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Harlingen Authority; Location: The project is located 4 miles east of Highway 77 on FM 106, along the Arroyo Colorado, in Harlingen, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: RIO HONDO, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 864,377; Northing: 2,889,163. Project Description: The applicant proposes to construct a 30-foot by 50-foot dock (backfill and approximately 12-inch thick pad) put in place with about 120 linear feet of steel sheet piling wall and one concrete pile cluster deadman. A caliche road (13 feet wide, approximately 180 feet long) shall be cut into the existing river bank to allow access to the dock with a section of roadway needing backfill and about 30 linear feet of steel sheet piling wall. The dock is to be used to load and unload sand and other materials from barges. Estimated fill in waters of the United States is 817 cubic yards of caliche under the dock and behind the sheet piling. CCC Project No.: 08-0050-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1218 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited

to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the application listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200800284
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 23, 2008

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Comptroller of Public Accounts

Notice of No Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of no contract award and the withdrawal of the Request for Proposals in connection with the Request for Proposals (RFP #182a) for consulting services to conduct an Appraisal Standards Review of the Harris County Appraisal District.

The notice of issuance of the RFP was published in the *Texas Register* on October 26, 2007 (32 TexReg 7739).

TRD-200800288
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 23, 2008

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Notice of Request for Proposals

Pursuant to Chapters 403 and 2254, Subchapter A, Texas Government Code, and Chapter 2305, §2305.033, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #182b) for professional energy engineering services from qualified independent firms, energy service companies, and institutions of higher education that specialize in providing on-site Preliminary Energy Assessment (PEAs), reports, and customized energy engineering assistance to the agriculture and farming industry for the Agriculture Energy Program (Program). Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, on or about March 1, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, February 1, 2008, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. (CZT), Friday, February 1, 2008.

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, February 15, 2008. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on February 19, 2008, or as soon thereafter as practical, on the ESBD at: http://esbd.cpa.state.tx.us. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Non-Mandatory Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Monday, February 25, 2008. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 1, 2008; Non-Mandatory Letters of Intent and Questions Due - February 15, 2008, 2 p.m. CZT; Official Questions and Responses posted - February 19, 2008 (or as soon thereafter as practical); Proposals Due - February 25, 2008, 2 p.m. CZT; Contract Execution - March 1, 2008, or as soon thereafter as practical; Commencement of Project Activities - March 1, 2008, or as soon thereafter as practical.

TRD-200800289
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 23, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/28/08 - 02/03/08 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/28/08 - 02/03/08 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/08 - 02/29/08 is 7.25% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/08 - 02/29/08 is 7.25% for Commercial over $250,000.

[1]Credit for personal, family, or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200800294
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 23, 2008

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Texas Education Agency

Request for Applications Concerning the 2007-2009 Rural Technology Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-106 from school districts that (a) have an enrollment of fewer than 5,000 students; (b) are not located in an area defined by the United States Office of Management and Budget as a standard metropolitan statistical area as of January 1, 2007; and (c) responded to the mandatory Notice of Intent on or before November 1, 2007.

Description. The purpose of this grant program is to establish pilot programs to provide technology-based supplemental instruction, including online courses, to students in rural school districts to improve the overall success of the students and address their individual academic needs. The Rural Technology Grant pilot program is designed to improve student performance for students not currently meeting standards in English, language arts, social studies, mathematics, science, or languages other than English and to supplement the education of students needing more opportunities than currently provided by the district.

Districts selected for the pilot program are entitled to receive state grant funds in an amount not to exceed $200 per school year for each student in Grades 6-12 participating in the program. As a condition of receiving a state grant, a district must contribute additional funding of at least $100 per school year for each student in Grades 6-12 participating in the program for activities provided at the campus through the program. A campus participating in the program must provide students with individual access to technology-based supplemental instruction for at least 10 hours each week.

Dates of Project. The Rural Technology Grant pilot program will be implemented during the 2007-2008 and 2008-2009 school years. Applicants should plan for a starting date of no earlier than May 1, 2008, and an ending date of no later than August 31, 2009.

Project Amount. A total of $4 million is available for this grant program. Project funding in the subsequent grant period will be based on satisfactory progress of the first-year objectives and activities and on budget approval by the commissioner of education and the state legislature.

Selection Criteria. Applications will be selected based on the following priorities: (1) diverse geographical representation across the state; (2) greatest need overall as indicated by a district's rating under the 2007 state accountability rating system; (3) readiness to implement and support the program as reflected in the Texas Campus STaR Chart; and (4) number of students participating in the program in relation to total student enrollment. Priority will be given to districts that demonstrate that a large percentage of their Grades 6-12 student population needs supplemental instruction in one or more content areas. Applications must show evidence of technical readiness to implement and support this grant program and must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications that address all requirements in the RFA and that are most advantageous to the pilot project evaluation.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-08-106 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, March 13, 2008, to be eligible to be considered for funding.

TRD-200800291
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 23, 2008

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Commission on State Emergency Communications

Request for Proposals

Pursuant to Government Code §2254.029, the Commission on State Emergency Communications (Commission) announces its intent to invite consultants with documented expertise and experience in the field of Next Generation 9-1-1 planning to submit offers for a consulting services contract.

The Commission's objective is to contract for consulting services to assist the Commission in planning for the phased in deployment of a Next Generation 9-1-1 system.

The Commission proposes to obtain the consulting services described above, with services commencing on or after February 29, 2008. This announcement is intended to provide potential proposers with notice of the Commission's interest in obtaining such assistance.

The Commission has notified the Legislative Budget Board of the Commission's intent to engage a consultant and requested from the Governor's Office of Budget, Planning and Policy a finding of fact that the requested consulting services are necessary. The Commission's award of a contract is contingent upon its receipt of such a finding.

The award for consulting services will be made by the Commission basing its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, the Commission will give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted regarding this Request for Proposal (RFP) is:

Brian Millington

Commission on State Emergency Communications

William Hobby Building

333 Guadalupe, Suite 2-212

Austin, Texas 78701

E-mail inquiries should be sent to csecinfo@csec.state.tx.us; include in the subject line: "CSEC RFP Next Generation 9-1-1."

Consultants interested in being considered for the consulting services contract must submit a completed proposal in response to the RFP package **(The RFP package can be downloaded at http://www.911.state.tx.us/browse.php/ng911system)** by the submission deadline.

The deadline for proposals is February 15, 2008. All submissions must be received by the Commission by 5:00 p.m., Central Standard Time on the due date.

TRD-200800306
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: January 23, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 10, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 10, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Amigo's Fuel Center, L.P.; DOCKET NUMBER: 2007-1533-MLM-E; IDENTIFIER: RN105187181; LOCATION: Moore, Frio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Marina Bello dba Bello's Korner Store; DOCKET NUMBER: 2007-1571-PST-E; IDENTIFIER: RN101912053; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $5,000; Supplemental Environmental Project (SEP) offset amount of $2,000 applied to Audubon Society-Mitchell Lake Project; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Belvan Corporation; DOCKET NUMBER: 2007-1548-AIR-E; IDENTIFIER: RN100214022; LOCATION: Crockett County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit a 2006 annual emissions inventory update; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Blackland Water Supply Corporation; DOCKET NUMBER: 2007-1382-PWS-E; IDENTIFIER: RN101253805; LOCATION: Royse City, Rockwall County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(3), by failing to provide an adequate purchase water contract; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual; 30 TAC §290.44(h)(1)(B)(ii), by failing to maintain copies of backflow prevention assembly tests; 30 TAC §290.43(e), by failing to maintain the intruder-resistant fence; and 30 TAC §290.109(c) and THSC, §341.033(d), by failing to collect and submit at least one monthly water sample for bacteriological analysis; PENALTY: $3,142; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Creek Park Corporation; DOCKET NUMBER: 2007-1684-MWD-E; IDENTIFIER: RN102095106; LOCATION: Joshua, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014556001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for five-day biochemical oxygen demand (BOD_5) and total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES Permit Number WQ0014556001, Sludge Provisions, by failing to submit monitoring results at the intervals specified in the permit;

PENALTY: $2,200; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Double B Foods, Inc.; DOCKET NUMBER: 2007-1526-AIR-E; IDENTIFIER: RN103857504; LOCATION: Meridian, Bosque County, Texas; TYPE OF FACILITY: food manufacturing plant; RULE VIOLATED: 30 TAC §101.4 and §106.373(3)(B) and THSC, §382.085(a) and (b), by failing to ensure the plant's refrigeration system was maintained in good working order and by failing to prevent a nuisance odor; PENALTY: $16,050; Supplemental Environmental Project (SEP) offset amount of $8,025 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2007-0830-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O-01436, Special Terms and Conditions (STC) 10A, Air Permit Number 21832, Special Condition (SC) 1, and THSC, §382.085(b), by failing to maintain an emission rate below the hourly allowable emission limit; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01436, STC 10A, Air Permit Number 1105, SC 14B, and THSC, §382.085(b), by failing to depressurize a railcar to the flare; 30 TAC §§113.100(1), 113.110, 113.120, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.102(a) and §63.126(b)(2), Air Permit 1105, SC 14.B., FOP Number O-01436, STC 10A, and THSC, §382.085(b), by failing to depressurize a railcar to the flare; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 8522, SC 1, FOP Number O-01969, General Conditions (GC), and THSC, §382.085(b), by failing to prevent unauthorized emissions while unloading solvent (mineral spirits) from the truck; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01969, STC 4, Air Permit Number 8522, SC 5, and THSC, §382.085(b), by failing to meet the maximum allowable emission rate while venting the polymerization reactor to the polyethylene Number 2 plant flare; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19959, SC 1, FOP Number O-01967, GC 1A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18528, SC 1, FOP Number O-01968, GC, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), FOP Number O-01974, STC 6, Air Permit Numbers 49363 and 1329, SC 1, and THSC, §382.085(b), by failing to maintain an emission rate below the hourly allowable emission limit; PENALTY: $102,125; Supplemental Environmental Project (SEP) offset amount of $40,850 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1230-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 2128, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §115.722(c)(1) and §116.115(c), Air Permit Number 2933, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $20,000; Supplemental Environmental Project (SEP) offset amount of $10,000 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red Project; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1315-AIR-E; IDENTIFIER: RN100210574; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 4634 and 4634B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), Air Permit Number 19558, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $126,400; Supplemental Environmental Project (SEP) offset amount of $63,200 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Fort Bend Regional Landfill, LP; DOCKET NUMBER: 2007-1394-MSW-E; IDENTIFIER: RN102803913; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.121(a) and Permit Number 2270 Site Development Plan, Section 1.4 - Mitigation Plan, by failing to comply with the approved site development plan in Permit Number 2270; and 30 TAC §330.331(a)(2), by failing to maintain less than a 30 centimeter depth of leachate over the landfill liner; PENALTY: $15,500; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: GB Biosciences Corporation; DOCKET NUMBER: 2007-1449-AIR-E; IDENTIFIER: RN100238492; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fungicide manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O-02264, SC Number 2F, and THSC, §382.085(b), by failing to notify the commission of a reportable emission event; 30 TAC §116.115(c), New Source Review (NSR) Permit Number 234B, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted emission limits; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by emitting unauthorized emissions of R-22; PENALTY: $23,875; Supplemental Environmental Project (SEP) offset amount of $9,550 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Hale Center; DOCKET NUMBER: 2007-1402-PWS-E; IDENTIFIER: RN101383982; LOCATION: Hale Center, Hale County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide well casing vents with openings that are covered with a 16-mesh or finer corrosion resistant screen; 30 TAC §290.42(e)(4)(B), by failing to house gas chlorination equipment and cylinders in a separate building or room with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; 30 TAC §290.43(c)(2), by failing to keep all storage tank roof hatches locked except during inspection and maintenance activities; 30 TAC §290.43(c)(4), by failing to provide a liquid level indicator on the elevated storage tank; 30 TAC §290.46(f)(2), by failing to provide water system records to commission personnel at the time of the investigation, including customer service inspection reports; 30 TAC §290.46(m), by failing to initiate a maintenance program to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.110(c)(5)(B), by failing to

monitor the disinfectant residual at representative locations in the distribution system; and 30 TAC §290.121(a), by failing to maintain a complete and up-to-date chemical and microbiological monitoring plan; PENALTY: $2,599; Supplemental Environmental Project (SEP) offset amount of $2,080 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(13) COMPANY: City of Hamilton; DOCKET NUMBER: 2007-1540-PWS-E; IDENTIFIER: RN101383586; LOCATION: Hamilton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(4), by failing to test backflow prevention assemblies; 30 TAC §290.42(l), by failing to maintain an up-to-date facility operations manual; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(m), by failing to initiate maintenance housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.43(c)(8) and (c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; and 30 TAC §290.45(f)(4), by failing to provide a purchase water contract that authorized a maximum daily purchase rate, or a uniform purchase rate to meet a minimum production capacity of 0.6 gallons per minute (gpm) per connection; PENALTY: $4,687; Supplemental Environmental Project (SEP) offset amount of $3,750 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: W. O. Jordan; DOCKET NUMBER: 2007-2007-WQ-E; IDENTIFIER: RN105115075; LOCATION: Tyler County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Lakeshore Utility Company; DOCKET NUMBER: 2007-1579-MWD-E; IDENTIFIER: RN102671153; LOCATION: Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the disposal of wastewater; and 30 TAC §305.125(1), TCEQ Permit Number 11502001, Effluent Limitations, Section IV.A., and the Code, §26.121(a), by failing to comply with the 30-day average limit of 20 milligrams per liter (mg/L) for the BOD_5; PENALTY: $12,240; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2007-1546-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 19613, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; Supplemental Environmental Project (SEP) offset amount of $4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Manshack & Sons, Inc.; DOCKET NUMBER: 2007-0656-MSW-E; IDENTIFIER: RN102903317; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: unauthorized recycling; RULE VIOLATED: 30 TAC §328.4(a) and §328.5(a), by failing to obtain authorization to operate a recycling facility; PENALTY: $2,540; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2007-1490-AIR-E; IDENTIFIER: RN100209949; LOCATION: Chambers County, Texas; TYPE OF FACILITY: plant that separates a demethanized gas into separate products; RULE VIOLATED: 30 TAC §101.201(b), by failing to report an emission event timely; and 30 TAC §116.115(c), Permit Number 3956B, Maximum Allowable Emission Sources - SC 1, and THSC, §382.085(b), by failing to prevent the release of unauthorized air contaminants emitted into the atmosphere; PENALTY: $2,808; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Palo Duro Service Company, Inc.; DOCKET NUMBER: 2007-1507-PWS-E; IDENTIFIER: RN102324217; LOCATION: Benbrook, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.105(b) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for chloride and total dissolved solids; 30 TAC §290.46(d)(2)(A), by failing to maintain a free chlorine residual of at least 0.2 mg/L; and 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence; PENALTY: $962; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Pelican Refining Company, LLC; DOCKET NUMBER: 2007-1487-AIR-E; IDENTIFIER: RN100210483; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: asphalt manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01286, General Terms and Conditions, and THSC, §382.085(b), by failing to timely submit the annual permit compliance certification and its associated deviation reports; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report or record all emission events; and 30 TAC §115.122(a)(1)(A) and §116.115(c), NSR Permit Number 19742, SC 23, and THSC, §382.085(b), by failing to keep records of the continuously monitored incinerator firebox exit temperature; PENALTY: $9,120; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: R. A. Bagwell Oil Company, Inc.; DOCKET NUMBER: 2007-1555-IWD-E; IDENTIFIER: RN105006472; LOCATION: Rowena, Runnels County, Texas; TYPE OF FACILITY: petroleum contaminated remediation site with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG830245, Part III, Section A, Effluent Limitations, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for total lead, polynuclear aromatic hydrocarbons, total benzene, ethylbenzene, toluene, xylene, and benzene; and 30 TAC §305.125(1) and TPDES General Permit Number TXG830245, Part IV, Standard Monitoring and Reporting Requirement Number 7(a), by failing to sample for polynuclear aromatic hydrocarbons; PENALTY: $9,850; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(22) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2007-1519-MWD-E; IDENTIFIER: RN102328564; LOCATION: Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010788001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010788001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $4,410; Supplemental Environmental Project (SEP) offset amount of $3,528 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (408) 898-3838.

(23) COMPANY: Restaurant Service, L.L.C.; DOCKET NUMBER: 2007-1614-MWD-E; IDENTIFIER: RN102184033; LOCATION: Jersey Village, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $8,960; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Rudolphs, Inc. dba The Store; DOCKET NUMBER: 2007-1349-PST-E; IDENTIFIER: RN101723641; LOCATION: Yoakum, Lavaca County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $5,100; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Scurry-Rosser Independent School District; DOCKET NUMBER: 2007-1532-MWD-E; IDENTIFIER: RN103930160; LOCATION: Kaufman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14471001, Effluent Limitations and Monitoring Requirements 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS and total chlorine residual; PENALTY: $6,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Somerset Custom Homes, Ltd.; DOCKET NUMBER: 2007-2008-WQ-E; IDENTIFIER: RN105363691; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: home builder; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: City of Sour Lake; DOCKET NUMBER: 2007-0779-PWS-E; IDENTIFIER: RN101395945; LOCATION: Sour Lake, Hardin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice to customers; PENALTY: $104; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Sterling Chemicals, Inc.; DOCKET NUMBER: 2007-1604-IWD-E; IDENTIFIER: RN100212620; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000575000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for toluene, benzene, ethyl benzene, and styrene; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of partially treated process water to any water in the state; PENALTY: $7,875; Supplemental Environmental Project (SEP) offset amount of $3,150 applied to Galveston Bay Foundation - "Marsh Mania"; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Sunoco Pipeline, LP; DOCKET NUMBER: 2007-1448-AIR-E; IDENTIFIER: RN100215128; LOCATION: Hermleigh, Scurry County, Texas; TYPE OF FACILITY: crude oil pipeline breakout station; RULE VIOLATED: 30 TAC §101.20(1) and §116.715(a), 40 CFR §60.115(b)(2), Flexible Permit Number 72661, SC Number 3(a), and THSC, §382.085(b), by failing to submit tank seal gap inspection reports; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to report in writing all instances of deviations to the executive director; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(30) COMPANY: Helen Strebeck and Odie Borden dba Tall Oaks Estates Water System; DOCKET NUMBER: 2007-1056-PWS-E; IDENTIFIER: RN101228609; LOCATION: Van Zandt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 1.5 gpm per connection; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to meet a pressure tank capacity of 50 gallons per connection for a water system without ground storage; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 50 feet of the water system's wells; 30 TAC §290.46(q)(2) and THSC, §341.036, by failing to issue a boil water notice; 30 TAC §290.46(j), by failing to issue a customer service inspection certificate prior to providing continuous water service; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to ensure that the public water supply operation is under the direct supervision of a water works operator who holds a minimum of a Class "D" license; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(31) COMPANY: City of Tatum; DOCKET NUMBER: 2007-1516-PWS-E; IDENTIFIER: RN101255800; LOCATION: Tatum, Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from being within 50 feet of the water supply well; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.42(e)(6), by failing to provide adequate ventilation to the outside atmosphere for the housed anhydrous ammonia equipment; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.43(e) and §290.46(m), by failing to provide a properly constructed intruder-resistant fence in order to protect the system's ground and elevated storage tanks and by failing to initiate maintenance and housekeeping practices; 30 TAC §290.46(f), by failing to maintain records of water works operation and maintenance activities and make them available to commission personnel; 30 TAC §290.46(m)(1)(A), by failing to inspect the system's ground and elevated storage tank annually; 30 TAC §290.42(j), by failing to provide documentation that all chemicals or replacement process media used in the interior coating applied to the ground storage tank at plant number 3 conform to

American National Standards Institute/National Sanitation Foundation Standard 61 for indirect additives; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; PENALTY: $2,343; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(32) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-1791-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,500; Supplemental Environmental Project (SEP) offset amount of $2,600 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red Project; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2007-0573-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 48813, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 37884, SC Number 6.A., Air Permit Number O-02313, SC Number 1.A., 40 CFR §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to maintain a minimum net heating value of 200 British Thermal Units per standard cubic foot; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 37884, SC Number 1, Air Permit Number O-02313, SC Number 8.A., and THSC, §382.085(b), by failing to meet the maximum allowable emission rate of 0.65 pounds per hour for nitrogen oxides; and 30 TAC §§115.352(4), 115.783(5), 116.115(c), and 122.143(4), Air Permit Number 37884, SC Number 8.E., Air Permit Number O-02313, SC Number 8.A., 40 CFR §60.482-6(a)(1) and §60.562-2(a), and THSC, §382.085(b), by failing to seal an open-ended line with a second valve, blind flange, cap, or plug; PENALTY: $34,670; Supplemental Environmental Project (SEP) offset amount of $13,868 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Thomas M. Thorp dba Thorp's Laun-Dry; DOCKET NUMBER: 2007-1554-IHW-E; IDENTIFIER: RN104029350; LOCATION: Sonora, Sutton County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.20(d)(2) and 40 CFR §63.324(d), by failing to maintain required perchloroethylene records; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure; and 30 TAC §335.4(3), by failing to handle industrial waste in such a manner as to prevent the endangerment of public health and welfare; PENALTY: $5,450; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(35) COMPANY: Mae Dell Tondre dba Tondre Water System; DOCKET NUMBER: 2007-1824-PWS-E; IDENTIFIER: RN101227361; LOCATION: Simonton, Fort Bend County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by exceeding the maximum contaminant level for total coliform; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(b)(2)(A), by failing to collect all required repeat samples; and 30 TAC §290.109(c)(2)(F) and §290.122(b)(2)(A), by failing to collect at least five routine bacteriological samples; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1413-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and §122.143(4), Air Permit Number O-01253, SC Numbers 1.A. and 22, Air Permit Number 39142 and PSD-TX-822M2, SC Numbers 2.A. and 4.A., 40 CFR §63.11(b)(6)(ii) and §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to maintain the net heating value of the gas being combusted by assisted flares; 30 TAC §116.715(a) and §122.143(4), Air Permit Number O-01253, SC Numbers 1.A. and 22, Air Permit Number 39142 and PSD-TX-822M2, SC Numbers 2.A. and 4.A., 40 CFR §60.18(c)(4) and §63.11(b)(7), and THSC, §382.085(b), by failing to operate an assisted flare with an exit velocity of less than 60 feet per second; 30 TAC §§111.111(a)(4)(A), 116.715(a), and 122.143(4), Air Permit Number O-01253, SC Numbers 1.A. and 22, Air Permit Number 39142 and PSD-TX-822M2, SC Numbers 2.A., 4.A., and 13.C, 40 CFR §60.18(c)(1) and §63.11(b)(4), and THSC, §382.085(b), by failing to operate flares with visible emissions not to exceed five minutes during any consecutive two hour period; 30 TAC §122.143(4), Air Permit Number O-01253, SC Number 1.A., 40 CFR §63.1566(a)(2), and THSC, §382.085(b), by failing to maintain the daily average combustion zone temperature; and 30 TAC §116.715(a) and §122.143(4), Air Permit Number O-01253, SC Numbers 1.A. and 22, Air Permit Number 39142 and PSD-TX-822M2, SC Number 2.C., 40 CFR §60.104(a)(2)(i), and THSC, §382.085(b), by failing to prevent the discharge of sulfur dioxide to the atmosphere; PENALTY: $60,125; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1512-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $8,600; Supplemental Environmental Project (SEP) offset amount of $3,440 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: Viridis Energy (Texas), LP; DOCKET NUMBER: 2007-1470-AIR-E; IDENTIFIER: RN102663085; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §117.340(a) and §117.9020(2)(A)(i) and THSC, §382.085(b), by failing to install totalizing fuel flow meters; and 30 TAC §122.145(2)(A), Air Permit Number 02574, General Conditions, and THSC, §382.085(b), by failing to report deviations regarding fuel flow meters on internal combustion engines; PENALTY: $7,455; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: Viridis Energy (Texas), LP; DOCKET NUMBER: 2007-1475-AIR-E; IDENTIFIER: RN102495421; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: landfill; RULE VI-

OLATED: 30 TAC §117.340(a) and §117.9020(2)(A)(i) and THSC, §382.085(b), by failing to install totalizing fuel flow meters; and 30 TAC §122.145(2)(A), Air Permit Number 02565, General Conditions, and THSC, §382.085(b), by failing to report deviations regarding fuel flow meters on internal combustion engines; PENALTY: $7,455; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: WTG Jameson, L.P.; DOCKET NUMBER: 2007-1576-AIR-E; IDENTIFIER: RN100210285; LOCATION: Runnels County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit the annual emission inventory update in a timely manner; PENALTY: $970; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200800282
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 22, 2008

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Notice - Extension of Comment Period on the Proposed Amendments to 30 TAC Chapters 305 and 330

In the November 30, 2007, issue of the *Texas Register* (32 TexReg 8681), the Texas Commission on Environmental Quality (commission) published a notice of proposed amendments to Chapter 305, Consolidated Permits and Chapter 330, Municipal Solid Waste. The deadline date for written comments was published as January 15, 2008.

The commission has extended the deadline for receipt of written comments to February 22, 2008, for the proposed amendments of Chapters 305 and 330.

Written comments should be mailed to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at ***http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments being submitted via the eComments system. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information on the proposed review, please contact Jeff Davis, MSW Permits Section, at (512) 239-6228.**

TRD-200800290
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 23, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 30

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 30, Occupational Licenses and Registrations, under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 4, HB 1656, and Senate Bill 3, 80th Legislature, 2007. The amendments would create two new license classifications, irrigation technician and irrigation inspector, to be consistent with 30 TAC Chapter 344, Landscape Irrigation, Texas Occupations Code, §1903.251 and Texas Water Code, §49.238, and Texas Local Government Code, §401.006.

The commission will hold a public hearing on this proposal in Austin February 26, 2008 at 1:30 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building C, Room 131. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-031-030-CE. The comment period closes March 3, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Terry Thompson, Compliance Support Division, (512) 239-6095.

TRD-200800231
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 291

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 291, Utility Regulations under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill 3, §§2.05, 2.06, 2.07, 2.08, 2.32, 2.39, and 7.01; House Bill 149; and House Bill 3475, 80th Legislature, 2007, relating to water utilities. This proposed rulemaking would amend the definition of a landowner for the purpose of certificate of convenience and necessity (CCN) regulation; allow for consolidated billing and collection contracts between retail public water and sewer providers; allow for adjustments to utility rates to account for increases or decreases in documented energy costs; revise the rules relating to obtaining, amending, and decertifying a municipality's CCN for water and sewer service; create new duties of a water service provider to certain political subdivisions that provide sewer service to the same area; allow a district to establish different utility rates among classes of customers; allow a utility that takes over a nonfunctioning utility to charge reasonable temporary rates and give the utility a reasonable period of time to bring the nonfunctioning system into compliance with commission rules before the commission assesses penalties; allow certain counties to operate a utility in the same manner as a municipality; and, allow a city to extend a CCN to area outside the city's

extraterritorial jurisdiction so long as the city meets the criteria outlined in Texas Water Code, §13.241, for granting or amending a CCN.

The commission will hold a public hearing on this proposal in Austin on February 12, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091.

Comments may be submitted to John Gaete, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-048-291-PR. The comment period closes March 3, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Tammy Holguin Benter, Water Supply Division, (512) 239-6136.

TRD-200800216
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 335

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bills 1457 and 1719, 80th Legislature, 2007, Regular Session. The proposed rulemaking would eliminate the requirement for landowners to notify the commission of on-site burial of animal carcasses provided they have an approved water quality management plan for that site. The proposed rulemaking would also eliminate the use of poultry carcasses as swine food.

The commission will hold a public hearing on this proposal in Austin on February 26 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-042-335-PR. The comment period closes March 3, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Tom Weirich, Waste Permits Division, (512) 239-6609.

TRD-200800234
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 344

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 344, Landscape Irrigation, under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement HB 4 and SB 3, 80th Legislature, by establishing, in consultation with the Irrigator Advisory Council, standards for irrigation system design, installation, and operation, water conservation, and duties and responsibilities of licensed irrigators. The proposed rulemaking would also implement HB 1656, by exempting certain irrigation systems from permitting requirements. Some municipalities would be required to adopt TCEQ landscape irrigation rules. The proposed rules would define the roles and responsibilities of licensed irrigator inspectors.

A public hearing on this proposal will be held in Austin, Texas, on February 26, 2008, at 10:00 a.m., in Building B, Room 201A, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing with special communication or other accommodation needs should contact John Gaete, Office of Legal Services, at (512) 239-6091. Requests should be made as far in advance as possible.

Comments may be submitted to John Gaete, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments being submitted via the eComments

system. The comment period closes March 3, 2008. All comments should reference Rule Project Number 2007-027-344-CE. The proposed revisions may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information or questions concerning this proposal, please contact Candy Garrett, Compliance Support Division, at (512) 239-1451.

TRD-200800217
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of January 17, 2008 through January 18, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012996001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 11400 Green River Drive on the northeast corner of the crossing of Greens Bayou by Green River Drive in Harris County, Texas.

CITY OF PFLUGERVILLE has applied for a major amendment to TPDES Permit No. WQ0011845002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 4,400,000 gallons per day to an annual average flow not to exceed 5,300,000 gallons per day and to authorize less stringent effluent limitation for ammonia-nitrogen. The applicant also requested authorization to process Class A sludge from three other wastewater treatment facilities. The facility is located approximately 1.7 miles southeast of the City of Pflugerville and approximately 1.0 mile southeast of the intersection of Dessau Road and Farm-to-Market Road 1825 on the east bank of Gilleland Creek in Travis County, Texas. The sludge treatment works are located within the wastewater treatment facility; the sludge is disposed of by marketing and distribution and by use at the City's properties and parks.

CITY OF TOMBALL has applied for a renewal of TPDES Permit No. WQ0010616001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 615 East Huffsmith Road, approximately 1,400 feet due north of the intersection of Neal Street and East Huffsmith Road in the City of Tomball in Harris County, Texas.

COMAL INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to Permit No. WQ0013812001, to authorize an increase in the daily average flow from 6,800 gallons per day to 12,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 2.7548 acres. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facilities and disposal site are located approximately 1,800 feet on Sattler Road to the site and approximately 3,200 feet southwest of the intersection of State Highway 306 and Farm-to-Market Road 2673 in Comal County, Texas.

DYNAMIC PRODUCTS INC has applied for a renewal of TPDES Permit No. WQ0011841001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 2.0 miles south of Interstate Highway 10 and approximately 0.75 mile east of the intersection of Sheldon Road and Peninsula Road on the south side of Jacintoport Slip and 0.25 mile north of the Houston Ship Channel in Harris County, Texas.

FERNCO DEVELOPMENT LTD LENCO DEVELOPMENT LTD AND NORCO DEVELOPMENT LTD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014825001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 500 feet east of Windfern Road on the south bank of White Oak Bayou and one mile northeast of U.S. Highway 290 and approximately 14 miles northeast of the City of Houston central business district in Harris County, Texas. Authorization to discharge was previously permitted by expired Permit No. WQ0011051001.

NATIONAL OILWELL VARCO LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014856001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility will be located at 9015 Sheldon Road, approximately 0.3 mile south of the intersection of Highway 90 (Crosby Freeway) and Sheldon Road in Harris County, Texas.

RICHARDS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 550 feet north of Farm-to-Market Road 149 and 1,800 feet west of the Chicago, Rock Island and Pacific Railroad in Grimes County, Texas.

SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014836001, to authorize the discharge of filter backwash effluent from a water treatment plant at an annual average flow not to exceed 1,500,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014458001 which expired on February 1, 2007. The facility is located on County Road 127, approximately two miles north of Farm-to-Market Road 1117 in Gonzales County, Texas.

THE CITY OF KINGSVILLE has applied for a renewal of TPDES Permit No. WQ0010696004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day and the disposal of the treated effluent via irrigation of 950 acres of the Kleberg County Golf Course. The facility is located at north of Farm-to-Market Road 1717, approximately 1.5 miles east of the intersection of Farm-to-Market Road 1717 and U.S. Highway 77 in Kleberg County, Texas. The disposal site (golf course) is located approximately one mile north-northwest of the wastewater treatment facility.

WESTERN OILFIELDS SUPPLY COMPANY has applied for a renewal of TPDES Permit No. WQ0014409001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500 gallons per day. The facility is located on Battleground Road, 2.3 miles north of State Highway 225 in Harris County, Texas.

WYA AUTUMNWOOD LTD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014853001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day.

The facility will be located approximately 2.3 miles southwest of the intersection of Hardin Store Road and Farm-to-Market Road 2978, on the north side of Hardin Store Road, east of Mill Creek in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800296
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 23, 2008

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Notice of Water Rights Application

Notice issued January 18, 2008.

APPLICATION NO. 06-4411F; The Lower Neches Valley Authority or LNVA, P.O. Box 5117, Beaumont, TX 77726-5117, has applied for an amendment to Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. The certificate authorizes diversions from Pine Island Bayou, the Neches River, Lake Sam Rayburn on the Angelina River, and B.A. Steinhagen Lake on the Neches River, Neches River Basin located in Jasper, Sabine, San Augustine, Angelina, Nacogdoches, Tyler, Hardin, Jefferson, Orange, Liberty, and Chambers Counties. More information on the application and how to participate in the permitting process is given below. The applicant previously filed an application for amendment 06-4411E to remove Special Conditions 5.C and 5.D from its Certificate of Adjudication. (Notice of that application was published on September 29, 2007.) That application has been withdrawn. The new application for amendment 06-4411F and fees were received on December 20, 2007. A correction to the December 20, 2007 amendment application was received on January 2, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 3, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800297
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 23, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 11, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Roy Eugene Donaldson, II; SOAH Docket No. 582-06-0839; TCEQ Docket No. 2005-1510-MSW. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Roy Eugene Donaldson, II on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200800298
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 23, 2008

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Texas Facilities Commission

Request for Proposals

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-8-10892. TFC seeks a 5 year lease of approximately 4,000 square feet of office space in Pasadena, Harris, Texas.

The deadline for questions is February 8, 2008 and the deadline for proposals is February 15, 2008 at 3:00 p.m. The award date is March 21, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the

RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74699.*

TRD-200800192
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 16, 2008

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Texas Health and Human Services Commission

Notice of Correction - State Plan Amendment 08-001, Amendment Number 805

The Texas Health and Human Services Commission (HHSC) published a public notice of its intent to submit Transmittal Number 08-001, Amendment Number 805, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9160). HHSC anticipates the effective date for the proposed amendment to be January 1, 2008, subject to approval by the Centers for Medicare and Medicaid Services (CMS). HHSC will notify the public when the proposed amendment is finalized and will accept comments at that time.

TRD-200800209
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 17, 2008

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-000, Amendment Number 804, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2008.

The proposed amendment will add the Service Responsibility Option (SRO) as an option for self-direction in the Primary Home Care (PHC) program and Support Consultation as a State Plan service. SRO is an option for self-direction that allows the consumer to select, train, supervise, and manage attendants, but leaves the personnel and payroll responsibilities with the provider agency. Support Consultation is a State Plan service that provides practical skills training and assistance to individuals, thus enabling them to successfully self-direct their PHC services. Support Consultation is only available to individuals who use Consumer Directed Services (CDS) or SRO to manage their PHC services. The amendment will also adopt a reimbursement methodology for Support Consultation.

The proposed amendment to add Support Consultation as a State Plan service is estimated to result in additional annual aggregate expenditures of $234,731 for a portion of federal fiscal year (FFY) 2008 (February 1, 2008, through September 30, 2008), with approximately $142,153 in additional costs in federal funds and approximately $92,578 of additional costs in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of $358,674, with approximately $213,196 in additional costs in federal funds and approximately $145,478 of additional costs in state general revenue. The important role of Support Consultation in increasing the number of individuals who can self-direct their PHC services outweighs the cost increase.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Sarah Hambrick, Senior Rate Analyst, by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1431; by facsimile at (512) 491-1998; or by e-mail at sarah.hambrick@hhsc.state.tx.us Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200800285
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 23, 2008

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	TWE Testing Services LLC	L06134	Houston	00	01/11/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Panhandle Nuclear RX LTS	L04683	Amarillo	22	01/11/08
Austin	Kleinfelder	L01351	Austin	56	01/07/08
Austin	Cardinal Health	L02117	Austin	82	01/04/08
Austin	Austin Heart PA	L04626	Austin	50	01/10/08
Austin	Genexpress Informatics Inc	L05826	Austin	02	12/31/07
Beasley	Hudson Products Corporation	L02370	Beasley	47	01/07/08
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	110	01/08/08
Brownsville	Columbia Valley Healthcare System LP DBA Valley Regional Medical Center	L02274	Brownsville	39	01/11/08
Burnet	Daughters of Charity Health Services of Austin DBA Seton Highland Lakes	L03515	Burnet	33	01/02/08
Childress	Childress County Hospital District DBA Childress Regional Medical Center	L02784	Childress	29	01/03/08
Clifton	CLSW LTD DBA Chemical Lime Company	L02461	Clifton	14	01/07/08
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	43	01/09/08
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	14	01/11/08
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	178	01/07/08
Del Rio	Del Rio Heart Institute & Diabetes Center	L05950	Del Rio	04	01/03/08
Del Rio	Del Rio Heart Institute & Diabetes Center	L05950	Del Rio	05	01/09/08
Denson	Texoma Heart Group	L05208	Denson	11	01/02/08
El Paso	The University of Texas at El Paso	L00159	El Paso	57	01/10/08
El Paso	El Paso Health System LTD DBA Del Sol Medical Center	L02551	El Paso	52	01/03/08
El Paso	EP Medical Imaging Technology LP DBA El Paso Medical Imaging Technology	L06095	El Paso	01	01/04/08
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	110	01/09/08
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	16	01/14/08
Frisco	Frisco Medical Center LLP DBA Medical Center at Frisco	L06036	Frisco	03	01/08/08
Gainesville	Khawaja N Anwar MD PA	L05607	Gainesville	02	01/11/08
Garland	Garland Cardiac Imaging LP	L05948	Garland	03	01/09/08
Grapevine	Numed Imaging Centers Inc	L05016	Grapevine	17	12/20/07
Hereford	Hereford Regional Medical Center	L03111	Hereford	14	12/31/07
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	58	01/08/08

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Gammatron Inc	L02148	Houston	20	01/07/08
Houston	SJ Medical Center LLC DBA St Joseph Medical Center	L02279	Houston	64	01/08/08
Houston	American Diagnostic Tech LLC	L05514	Houston	44	01/31/08
Houston	CHCA West Houston LP DBA West Houston Medical Center	L06055	Houston	01	01/03/08
Houston	Radiomedix Inc DBA Radiomedix	L6044	Houston	02	01/03/08
Houston	Cardiac Nuclear Imaging Inc	L05962	Houston	02	01/03/08
Houston	Mohammad Attar MD PA	L05615	Houston	03	01/02/08
Humble	E John R Samuel MD PA	L05232	Humble	03	01/03/08
La Porte	Total Petrochemicals USA Inc	L04640	La Porte	21	01/10/08
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	26	01/08/08
Laredo	Laredo Medical Center DBA AR Sanchez SR & Iris Sanchez Stewart Cancer Center	L05305	Laredo	07	01/03/08
Lewisville	Columbia Medical Center of Lewisville Subsidiary LP DBA Medical Center of Lewisville	L02739	Lewisville	54	01/04/08
Longview	Longview Diagnostic Imaging LTD DBA Open Imaging of Longview	L05621	Longview	07	01/03/08
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	39	01/08/08
Midland	Texas Oncology PA DBA Allison Cancer Center	L05614	Midland	06	01/11/08
Midlothian	Holcim (Texas) LP	L05888	Midlothian	07	01/07/08
Mount Pleasant	Luminant DBA Luminant Power Monticello Plant	L04565	Mount Pleasant	14	01/07/08
Mt Vernon	East Texas Medical Center Mt Vernon	L05954	Mt Vernon	05	01/11/08
Nacogdoches	Stephen F Austin State University	L05191	Nacogdoches	06	01/03/08
Pampa	Signature Pampa Hospital LP DBA Pampa Regional Medical Center	L03123	Pampa	24	01/03/08
Pampa	Titan Specialties LTD	L04920	Pampa	10	12/20/07
Paris	Paris Cardiology Center	L06007	Paris	03	01/09/08
Plano	North Texas Regional Cancer Center	L05357	Plano	11	11/03/08
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	09	01/08/08
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	173	01/04/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00237	San Antonio	237	12/28/07
San Antonio	Bionumerik Pharmaceuticals Inc	L05226	San Antonio	10	01/31/08
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Center Sugarland	L05816	Sugar Land	08	01/03/08
Throughout TX	RSI Inspection LLC	L05624	Abilene	11	01/07/08
Throughout TX	Team Industrial Services Inc	L00087	Alvin	176	12/31/07
Throughout TX	Team Industrial Services Inc	L00087	Alvin	177	01/08/08
Throughout TX	Texas Department of Transportation	L00197	Austin	135	01/09/08
Throughout TX	Holt Engineering Inc	L02752	Austin	17	01/09/08
Throughout TX	Gulf Coast Weld Spec	L05426	Beaumont	63	01/11/08
Throughout TX	National Inspection Services LLC	L05930	Crowley	16	01/07/08

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	IRISNDT Inc	L04769	Deer Park	46	01/10/08
Throughout TX	Momentum Design and Construction Inc DBA Soils Mechanics International	L05212	El Paso	05	01/08/08
Throughout TX	Gray Wireline Service Inc	L03541	Fort Worth	24	12/31/07
Throughout TX	Weatherford US LP	L05291	Fort Worth	18	01/04/08
Throughout TX	Bonded Inspections Inc	L00693	Garland	76	01/07/08
Throughout TX	Entact Services LLC	L05627	Grapevine	06	12/20/07
Throughout TX	METCO	L03018	Houston	179	01/04/08
Throughout TX	Goolsby Testing Laboratories Inc	L03115	Humble	90	01/08/08
Throughout TX	Integrated Production Services Inc	L06051	Iowa Park	01	01/02/07
Throughout TX	MARCO Inspection Services LLC	L06072	Kilgore	06	01/11/08
Throughout TX	Terra Testing Inc	L02464	Lubbock	34	01/10/08
Throughout TX	T C Inspection Inc	L05833	Oyster Creek	28	01/08/08
Throughout TX	Zachary Industrial Inc San Antonio	L01995	San Antonio	25	01/08/08
Throughout TX	Zachary Industrial Inc San Antonio	L05230	San Antonio	15	01/08/08
Trinity	East Texas Medical Center Trinity	L05392	Trinity	07	01/11/07
Tyler	Trinity Mother Frances Health System	L01670	Tyler	131	01/07/08
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	22	01/03/08
Wichita Falls	Saint-Gobain Vetrotex American Inc	L02269	Wichita Falls	35	01/08/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Kerrville	Kerrville Cardiovascular Center LTD	L05334	Kerrville	04	01/08/08
Throughout TX	ECS – Texas LLP	L05384	Addison	05	01/10/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200800242
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 18, 2008

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Texas Department of Housing and Community Affairs

Announcement of the 2008 Public Hearing Schedule for Comment on 2008 Competitive Housing Tax Credit Applications

The Department's mission is to help Texans achieve a higher quality of life by building better communities. Through our rental production

programs, the Department encourages the new construction or rehabilitation of high-quality multifamily housing, primarily through private developers. These developments benefit Texans by providing qualified families with safe, affordable, quality housing.

The following 7 public hearings are provided to gather public comment on the 2008 Competitive Housing Tax Credit Applications. The schedule of these meetings is provided below:

Lubbock, Region 1

Tuesday, April 8

6:00 p.m.

Godeke Branch Library Community Room

6601 Quaker Avenue

Lubbock, Texas 79413

http://library.ci.lubbock.tx.us/

Dallas, Region 3

Monday, April 7

6:00 p.m.

J. Erik Jonsson Central Library Auditorium

1515 Young Street

Dallas, Texas 75201

http://dallaslibrary.org/

Houston, Region 6

Tuesday, April 8

6:00 p.m.

City Hall Annex Chambers Public Level

900 Bagby

Houston, Texas 77002

www.houstontx.gov

Austin, Region 7

Tuesday, April 8

6:00 p.m.

William B. Travis Building Room 1-111

1701 North Congress Avenue

Austin, Texas 78701

www.tdhca.state.tx.us

San Antonio, Region 9

Wednesday, April 9

6:00 p.m.

Henry B. Gonzalez Convention Center, Room 103A

200 E. Market Street

San Antonio, Texas 78205

www.sanantonio.gov

Harlingen, Region 11

Monday, April 7

6:00 p.m.

Harlingen Public Library Auditorium

410 '76 Drive

Harlingen, Texas 78550

El Paso, Region 13

Wednesday, April 9

6:00 p.m.

City Council Chambers Office

2 Civic Center Plaza, 2nd Floor

El Paso, Texas 79901

www.elpasotexas.gov

A detailed log of all 2008 Applications will be posted to the Department's website at the following link: http://www.tdhca.state.tx.us.

Written comments are also encouraged. Such comments should be addressed to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

For additional information you may contact the Multifamily Division at (512) 475-3440 or visit the program's web site at www.tdhca.state.tx.us.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3942 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require a language interpreter for the hearing should contact Gina Esteves at (512) 475-3942 at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Gina Esteves al siguiente número (512) 475-3942 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200800307
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 23, 2008

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Notice of Public Hearing for the PY 2008 Texas Weatherization Assistance Program Plan/Application

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public hearing to receive comments on the draft program year 2008 Texas Weatherization Assistance Program State Plan. Texas anticipates receiving an allocation of $5,549,413 for program year 2008. Funding to subrecipients may be adjusted slightly based on the approved plan and the allocation of carryover funds.

The public hearing will be held at 2:00 p.m. on Friday, February 15, 2008 in Room #116, State Insurance Building Annex, 221 East 11th Street, Austin, Texas. (The State Insurance Building Annex is situated directly across the street from the Capitol Visitor's Center, on the southwest corner of East 11th and San Jacinto streets.) At the hearing, a representative from TDHCA will describe changes to the Weatherization Assistance Program (WAP) and the proposed use of the U.S.

Department of Energy funds for program year 2008, which will be for the period of April 1, 2008 to March 31, 2009.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the program year 2008 Texas Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on February 22, 2008, to Ms. Lolly Caballero, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to Lolly.Caballero@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed Draft Plan may be obtained, after February 1, 2008, through TDHCA's web site, http://www.tdhca.state.tx.us/ea/index.htm or by calling Ms. Caballero at (512) 475-0471 or by writing to Ms. Caballero at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Lolly Caballero, (512) 475-0471 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200800304
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 23, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of GILLESPIE COUNTY FARMERS MUTUAL FIRE ASSOCIATION to GILLESPIE FARM MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Fredericksburg, Texas.

Application to change the name of PRESIDENTIAL LIFE INSURANCE COMPANY to GREAT SOUTHWEST LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Dallas, Texas.

Application for admission to the State of Texas by SOUTHERN CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Roswell, Georgia.

Application for admission to the State of Texas by BERKSHIRE HATHAWAY ASSURANCE CORPORATION, a foreign fire and/or casualty company. The home office is in Flushing, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200800305
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 23, 2008

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Proposed Fiscal Year 2008 Research Agenda for the Texas Department of Insurance Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the Commissioner of Insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). Labor Code §405.0026 also requires the Department to publish a proposed research agenda in the *Texas Register* for public review and comment and the Commissioner of Insurance to hold a public hearing on the proposed research agenda if requested by a member of the public.

In prior years, the REG utilized a set of criteria, including the availability of data and the applicability of research findings to multiple stakeholder groups to evaluate research project suggestions from system stakeholders and legislative offices. Given the number of legislatively-mandated research projects that must be completed in 2008 and the REG's available resources, the REG proposes the following set of projects for the Fiscal Year (FY) 2008 Research Agenda:

1. Completion and publication of the second edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025); report due in September 2008.

2. An analysis to assess the impact of certified workers' compensation health care networks on both the cost and the quality of medical care provided to injured workers, including a comparison of medical care provided prior to and after the implementation of networks, as well as a comparison of medical care provided to injured workers in and outside of networks (required by Labor Code §405.0025(c)); report due on December 1, 2008.

3. Continuing examination of the frequency of Workers' Compensation claims for both employers and employees participating in networks.

4. An annual update of return-to-work outcomes for injured workers using data from the Texas Workforce Commission (TWC) (Sunset Advisory Commission Management Recommendation).

5. An update of the 2006 study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code Article 5.55(e) and Labor Code §405.0025); report due on December 1, 2008.

6. An update of the FY 2007 analysis of the frequency, type, and outcome of peer reviews performed on behalf of insurance carriers using the results of the Department's Division of Workers' Compensation's peer review data call (to assess the impact of HB 1006 and HB 2004, 80th Legislature).

7. Assisting the Department's Division of Workers' Compensation with data analysis support for the development of a closed pharmaceutical formulary and fee guideline required under Labor Code §408.028(b) and (f).

8. Assisting the Department's Division of Workers' Compensation with an examination whether injured employees have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs (required by Labor Code §413.011(i)).

9. Assisting the State Office of Risk Management (SORM) with its efforts to:

a. collect and analyze data from each state agency regarding lost time, including sick and annual leave used by an injured employee (required by Labor Code §412.0126); and

b. analyze options to prepare state agencies for catastrophic claims, including a study of whether the state should establish a state employee workers' compensation catastrophe fund outside of the state treasury and/or purchase catastrophe reinsurance (required by Labor Code §412.0129); report due to the Legislature on September 1, 2008.

10. An analysis of the adequacy of income benefits paid to injured workers as a result of their work-related injuries.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING. To be considered, written comments on the proposed FY 2008 Research Agenda must be submitted no later than 5:00 p.m. on February 25, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Amy Lee, Director, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. For questions regarding the proposed agenda please contact Amy Lee at wcresearch@tdi.state.tx.us.

TRD-200800200
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 17, 2008

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted new 28 TAC §134.403 and §134.404 in the January 11, 2008, issue of the *Texas Register* (33 TexReg 400). Section 134.403 concerns Hospital Facility Fee Guideline--Outpatient and §134.404 concerns Hospital Facility Fee Guideline--Inpatient. The rules take effect February 1, 2008.

A typographical error appears on page 426, left column, §134.403(h). The word "for" at the beginning of the sentence should be capitalized. Subsection (h) should read as follows:

"(h) For medical services provided in an outpatient acute care hospital, but not addressed. . . ."

TRD-200800309

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Texas Lottery Commission

Notice of Public Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §402.705, relating to Compliance Review, proposed repeal of 16 TAC §402.406, relating to Exemptions from Licensing Requirements, and proposed amendments to 16 TAC §402.100, relating to Definitions, will be held on Wednesday, February 6, 2008, at 9:30 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200800206
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 17, 2008

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Notice of Public Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §401.312, relating to "Texas Two Step" On-Line Game, and proposed new 16 TAC §401.312, relating to "Texas Two Step" On-Line Game, will be held on Tuesday, February 5, 2008, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200800240
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 18, 2008

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Texas Parks and Wildlife Department

Notices of Availability and Request for Comments

Draft Damage Assessment and Restoration Plan

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), the Texas General Land Office (TGLO), and the United States Department of the Interior (DOI) represented by the United States Fish and Wildlife Service (FWS) (hereafter, Natural Resource Trustees).

ACTION: Notice of availability of a Draft Damage Assessment and Restoration Plan (DRAFT DARP) for natural resource damages resulting from the Former Empire Oil Refinery Gainesville, Cooke County Texas (Site) and of a 30-day period for public comment on the Draft DARP beginning the date of publication of this notice.

SUMMARY: This notice serves to inform the public that the Natural Resource Trustees have developed a Draft DARP to resolve Natural Resource Damages associated with this Site. The Draft DARP outlines the injuries resulting from the unauthorized discharge of oily products and hazardous materials into waters of the State of Texas and the adjacent habitats, as well as the proposed restoration project selected to compensate for those injuries.

The opportunity for public review and comment on the Draft DARP announced in this notice is required under the DOI Natural Resource Damage Assessment Rules 43 C.F.R. 11.81(d)(1) and (2).

ADDRESSES: A copy of this Draft DARP may be obtained by contacting: Charles Wood, Trustee Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, Phone: (512) 912-7155, e-mail: charles.wood@tpwd.state.tx.us.

DATES: Comments must be submitted in writing within 30 days of the publication of this notice to Charles Wood of the Texas Parks and Wildlife Department at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments re-

ceived during the 30-day comment period prior to finalizing the Draft DARP.

SUPPLEMENTARY INFORMATION: Located on approximately 200 acres of land, northwest of the City of Gainesville in Cooke County, Texas, the former Empire Oil Refinery was owned and operated by Empire Oil Company from approximately 1916 until the 1930s. Empire Oil was purchased by City Services some time during the 1930s and they continued active oil production operations at the Site until 1935. In 1982 City Services merged with Occidental Petroleum (Oxy Petroleum) with 95% of the assets being transferred into a new City Services company, while the remaining 5% of the original City Services assets were sold to Canadian Occidental Offshore Production Company. Through an indemnity agreement between Canadian Occidental Offshore Production Company and Oxy Petroleum, Oxy Petroleum assumed the liability for the former Empire Oil Site even though they were not a title holder to the property.

Remnants of the former refinery including the open oil storage pits and the tank pads remained on Site after operations ceased in 1935, with an undetermined amount of product and waste material. In October, 2000, the FWS in conjunction with other State and Federal Agencies responded to an anonymous complaint about the Site. It was during this complaint investigation that 51 waste coated dead birds and 4 dead turtles trapped in the oily wastes were observed within the North Pit. Additional wildlife mortalities were observed in the outer ring of the North Pit and included: 1 dead, waste coated bird, 1 dead turtle, and 1 dead, waste coated raccoon. Immediately South and adjacent to the outer ring of the North Pit, a product sheen was observed in Pecan Creek. Contamination was observed in the grassland area immediately adjacent to Pecan Creek and Southwest of the North Pit. This area appeared to be a series of old tank pads and dikes with visual signs of oily product mixed in the soil. Investigation of the South Pit identified seven dead turtles and sheens and salt staining of soils and sediments.

In April, 2001, Oxy Petroleum entered into the State of Texas Voluntary Cleanup Program (VCP) (Case No. 1325) to remediate the Site, focusing on the North Pit first, to reduce the imminent threat to migratory avian species and other wildlife. Emergency remediation of the North Pit was completed in September 2002. In conjunction with emergency remedial activities at the Site, the Trustees and Oxy Petroleum began discussions regarding impacts to natural resources. In 2003, the Trustees made the initial determination that releases of hazardous substances from the facility into the terrestrial and aquatic habitats associated with the Site had occurred, posing a direct and indirect threat to natural resources for which the Federal and/or State Governments may assert trusteeship under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. sec. 9601 et seq.), the Clean Water Act (33 U.S.C. sec. 1321 et seq.), the Oil Pollution Act (33 U.S.C. 2701 et seq.), and the Texas Hazardous Substances Spill Prevention and Control Act (Water Code, Chapter 26, Subchapter G). This includes the various terrestrial and aquatic habitats and the associated services provided by these habitats that have been affected or potentially affected by the contaminants at the Site including but not limited to: surface waters; submerged lands; sediments; wetlands; grassland; upland woods and riparian habitats; migratory avian species, including shore birds, colonial water birds, waterfowl, and raptors; wildlife; fisheries; and other aquatic organisms.

To facilitate the assessment and achieve a cost effective resolution of natural resource injuries at the Site, the Trustees worked with Oxy Petroleum and the TCEQ VCP to develop and review site specific data collection and ecological risk assessment and use this information as part of the injury assessment process. After evaluation it was determined that a minimum of 133 acres of constructed, enhanced, or restored habitat would be required to offset all injuries at the Site. This would include a minimum of 99.74 acres of wetlands or aquatic habitat, 29.17 acres of upland prairie, and 3.55 acres of riparian/bottomland hardwoods.

The overall objective of the restoration planning process is to identify restoration alternatives that are appropriate to restore, rehabilitate, replace, or acquire natural resources and their services equivalent to natural resources injured or lost as a result of releases of hazardous substances. These restoration actions make the public whole by providing compensation for injuries and losses to natural resources. Based on a thorough evaluation of potential restoration alternatives, the Trustees have concluded that primary restoration coupled with creation of new habitat is feasible and the most appropriate restoration option for the services injured. Therefore, the enhancement and construction of habitat (primary restoration) at and adjacent to the Former Empire Oil Refinery Site is proposed as the preferred restoration alternative.

For further information contact: Charles Wood at (512) 912-7155, fax: (512) 912-7160 , e-mail: charles.wood@tpwd.state.tx.us.

TRD-200800281
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: January 22, 2008

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Texas State Board of Public Accountancy

Request for Proposals - Consulting on Audit and Other Attest Services

INTRODUCTION

Purpose

The Texas State Board of Public Accountancy (hereinafter referred to as the Board) is soliciting responses to this Request for Proposals (RFP) for qualified individuals and entities to provide consulting services to review the attest work of Certified Public Accountants.

Schedule of proposal process

To be considered, a proposal must be received by the Board by no later than Monday, March 17, 2008. Proposers should be prepared to give further information to the Board if requested. Final selection will be made by the Board.

Term of Selection

Performance under a contract pursuant to this RFP will begin upon contract execution and will continue through August 31, 2009. This contract may be extended into the Board's following fiscal year.

Modification/Cancellation

The Board reserves the right to modify or cancel this RFP, in whole or in part. In that event, the Board will make every effort to provide notice of the modification or cancellation to each organization to which this RFP was provided by mail. After the awarding of a contract, the Board reserves the right to add to, delete from, cancel, or substitute work requirements as it deems advisable for the success of the work needed.

Cost of proposal preparation

The Board will not reimburse any cost incurred in the preparation of a proposal.

Proposals shall be mailed or hand delivered to:

William Treacy, Executive Director

Texas State Board of Public Accountancy

333 Guadalupe, Tower 3, Suite 900

Austin, Texas 78701-3900

Submission Deadline

All proposals must be received by the Board no later than 5:00 p.m., Central Standard Time, on March 17, 2008. Proposals received after that date and time will not be accepted and the Board assumes no responsibility for late proposals.

Proposal Requirements

The proposal must include a proposed hourly rate in addition to a recitation of experience and qualifications. The Committee will consider responsive only those proposals that include all elements required by this RFP. The final selection(s) will be to the submitter(s) whose services represent the best combination of price and quality.

Notice of Selection

After the selection, the proposals will be available for public inspection in accordance with the Public Information Act, Government Code, and Chapter 552.

Inquiries

All questions pertaining to this RFP may be directed to William Treacy, Executive Director, (512) 305-7801, executive@tsbpa.state.tx.us.

Specific Tasks

The consultant(s) will be required to provide a Board committee with an opinion as to whether the audits, compilations, reviews or other attest services performed by Board licensees being examined by the Board were prepared in accordance with applicable professional standards including but not limited to Statements on Auditing Standards or if it is an examination of prospective financial information, Standards for Attestation Engagements.

The consultant(s) will be asked to provide a written report to the Board committee and possibly appear before the Board committee to present the report. The consultant(s) may also be asked to serve as an expert witness regarding the opinions expressed in the report in an informal hearing before the Board committee or in an adjudicatory proceeding. The extent of the consultant's review and report will be determined by the Board committee and a response time established at the time of the assignment.

REQUIREMENTS FOR PARTICIPATION IN PROPOSAL PROCESS

Certification

Any person responding to this Request for Proposals must be a Texas licensed Certified Public Accountant with at least 10 years of accounting or auditing experience. The disciplinary history of the CPA being considered for this contract will be reviewed and considered prior to the award of any contract.

Termination of Contract

The Board reserves the right to terminate the contract, in whole or in part, due to failure of the consultant to carry out any term, promise, or condition of the contract. The Board reserves the right to terminate the agreement at any time without penalty or recourse by giving written notice to the consultant at least 30 days before the effective date of the termination or by not renewing the contract beyond its expiration date. In the event of termination, all documents, data, and reports prepared by the consultant under the contract shall become the property of the Board. The consultant will be entitled to receive just and equitable compensation for that work completed before the effective date of termination.

Prohibited Interest and Conflict of Interest

No Board member or employee may have a direct interest in the proceeds from a contract resulting from this RFP. No Board member or employee may be related within the second degree of consanguinity or affinity to anyone who has a direct interest in the proceeds of a contract arising from this RFP.

Confidentiality

The consultant will be provided confidential records or documents in connection with the consultant's work under the contract. When this occurs the consultant will be required to maintain the confidentiality of such documents. Breach of such confidentiality could subject the consultant to disciplinary action by the Board pursuant to the Public Accountancy Act.

Reserved Rights

The Board reserves the right to reject any and all offers and re-solicit or cancel this RFP if that action is deemed in the best interest of the Board.

The Board is not required to select the lowest priced proposal, but will take into consideration services that represent the best combination of price and quality.

TRD-200800278
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Filed: January 18, 2008

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 16, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Solaro Energy Marketing Corporation for Retail Electric Provider (REP) Certification, Docket Number 35240 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 8, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35240.

TRD-200800293
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2008

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Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 11, 2008, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Olmito Gardens Subdivision/Luis Rodriguez's Lot). Docket Number 35217.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Luis Rodriguez requesting BPUB to provide electric utility service to his 2.5 acre tract of land. The estimated cost to BPUB to provide service to this proposed area is $402.50. The area is presently undeveloped. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 8, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35217.

TRD-200800194
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2008

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on January 16, 2008, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on January 18, 2008.

Docket Title and Number: Application of Windstream Communications Southwest, Inc. for Approval of a LRIC Study for Automatic Intercept Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 35243.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 35243. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35243.

TRD-200800202
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2008

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Request for Proposals

Low-Income Discount Administrator to Administer the Low-Income Customer Rate Reduction Programs for Electric and Telephone Service in Texas; RFP Number 473-08-00124.

The Public Utility Commission of Texas (PUCT) requests proposals for the administration of the low-income residential customer rate reduction programs for electric and telephone services in Texas. This Request for Proposals (RFP) seeks a vendor that can serve as Low-Income Discount Administrator (LIDA) for both the electric and telephone discount programs. The LIDA will be responsible for: (1) all duties associated with creating and maintaining a database of customers eligible for the electric and telephone discount programs and (2) notifying retail electric providers and telephone service providers of eligible customers so that the utility providers can apply the appropriate discounts to each customer's monthly bills.

390,000 Texans receive the electric low-income discount. The Texas Legislature appropriated $80 million for electric discounts in Fiscal Year 2008 and $90 million for Fiscal Year 2009. Currently, 1,000,000 Texans receive the telephone low-income discount. The Texas Universal Service Fund (TUSF) paid a total of more than $28.4 million in telephone discounts in Fiscal Year 2007. The total number of records handled per month for this project is in excess of 16 million. These records have the potential for 4 million matches for the two programs per month.

The RFP documentation may be obtained by contacting: Cindy Wilson, Purchaser at (512) 936-7069 or e-mail at cindy.wilson@puc.state.tx.us. The RFP also can be found on the PUCT website at http://www.puc.state.tx.us/about/procurement/index.cfm.

The PUCT will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

NOTE: The PUCT will host a mandatory meeting for interested proposers on Friday, February 15, 2008, at 10:00 a.m. on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Failure to attend this meeting will disqualify proposers from participating in this procurement.

Proposals must be received on or before 5:00 p.m. CDT on Friday, March 14, 2008.

TRD-200800302
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2008

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Office of the Secretary of State

Notice of Funding Availability for Voting Access for Individuals with Disabilities Grant Program

Introduction:

The Texas Secretary of State (SOS) announced the availability of federal funds for counties to make polling places accessible and provide the same opportunity for access and participation to individuals with disabilities in September 2006. The SOS is amending that announcement to increase the eligible funding for each county. It also amends the deadline to apply for the funding due to the lapse date of the federal funds. This announcement supersedes all previous correspondence.

Authority:

The availability of funds is authorized by Title II, Subtitle D, Section 261 of the Help America Vote Act (HAVA) (42 U.S.C. 15461).

Eligible Applicants:

All Texas counties.

Use of Funds:

Making Polling Places Accessible

1. Making pathways more accessible by building or repaving sidewalks.

2. Construction or repair of ramps and threshold ramps.

3. Constructing curb cuts and adding handrails.

4. Establishing accessible parking spaces closer to the accessible entrance.

5. Providing adequate signage showing where accessible parking and entrances are located and indicating that service animals are welcome.

6. Purchasing hardware that will make it easy for persons with limited mobility or grasping ability to open doors.

7. Other projects that improve polling place accessibility deemed reasonable and necessary by the SOS.

Provide the Same Opportunity for Access and Participation to Individuals with Disabilities

1. Magnifiers.

2. Signature guides.

3. Accessible voting booths or tables.

4. Seats to accommodate persons who have difficulty standing for long periods of time.

5. Telephones in order to allow the use of all Relay Texas services including speech-to-speech relay.

6. Informational material to be written in large print and in Braille.

7. Other devices that provide the same opportunity for access and participation to individuals with disabilities deemed reasonable and necessary by the SOS.

Funding Restrictions:

Funds used for permanent improvements such as repaving sidewalks and curb cuts may only be applied to county owned property utilized for a polling location used during a federal election.

Available Funding:

Making Polling Places Accessible

Using polling location statistics for the 2006 March Primary, the county may apply for funding not to exceed the following amounts:

(a) $2,500 for counties with 10 polling locations or less;

(b) $5,000 for counties with 50 polling locations or less; and,

(c) $7,500 for counties with polling locations of more than 50.

Provide the Same Opportunity for Access and Participation to Individuals with Disabilities Using polling location statistics for the 2006 March Primary, the county may apply for funding not to exceed the following amounts:

(a) $1,500 for counties with 10 polling locations or less;

(b) $1,750 for counties with 50 polling locations or less; and,

(c) $2,000 for counties with polling locations of more than 50.

Funding Period:

Obligations for eligible expenditures must be incurred during the following time period: January 1, 2005 through December 31, 2008. All funds must be drawdown by that time.

Funding Requirements:

A copy of the "Americans with Disabilities Act (ADA) Checklist for Polling Places" must be completed and kept on file with the County Clerk or Election Administrator for the county. A copy of the checklist can be found at http://www.usdoj.gov/crt/ada/votingck.htm.

All Texas counties must be in compliance with all applicable federal and state laws and regulations, including the terms and conditions set forth in the acceptance of the grant. The terms and conditions can be viewed at http://www.sos.state.tx.us/elections/hava/funding.shtml under the bullets labeled Making Polling Places Accessible and Provide the Same Opportunity for Access and Participation to Individuals with Disabilities Terms and Conditions of Grant Funding.

Requesting the Application:

The county judge, as chief executive officer for the county, must submit a budget via the Texas HAVA online grant system (http://hava.tamu.edu/) and be approved by the Secretary of State's Office. The county judge will use the same user ID and password that was used for previous HAVA funding requests (e.g., voting system acquisition funding). For inquiries, contact Dan Glotzer or Jennifer Holliman toll-free at 1-800-252-8683 or email dglotzer@sos.state.tx.us or jholliman@sos.state.tx.us.

Budget Submission Deadline:

Budgets may be submitted via the Texas HAVA online grant system effective immediately and will be accepted through April 30, 2008. Counties that do not submit a budget via the online grant system by April 30, 2008 will forfeit their funding. A county that submits a budget for a portion of the funding for which it is eligible will not forfeit the unbudgeted amount and may submit a grant adjustment prior to the expiration of the funding period to allocate the remaining balance.

TRD-200800308
Ann McGeehan
Director of Elections
Office of the Secretary of State
Filed: January 23, 2008

Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200800286
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 23, 2008

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Public Notice - 2008 Program Call Border Colonia Access Program

In accordance with 43 TAC §15.103, the Texas Department of Transportation (department) issues this 2008 Program Call for proposed projects to be considered for funding under the department's Border Colonia Access Program. Government Code, Chapter 1403, requires the Texas Public Finance Authority, in accordance with requests from the Office of the Governor, to issue general obligation bonds and notes in an aggregate amount not to exceed $175 million, and as directed by the department, distribute the proceeds to counties to provide financial assistance for colonia access roadway projects to serve border colonias. Chapter 1403 requires the Texas Transportation Commission (commission) to establish a program to administer the use of the proceeds of the bonds and notes.

The commission established the Border Colonia Access Program in 43 TAC §§15.100 - 15.106. Eligible project costs under the program are the cost of constructing, administering, or providing drainage for a project, including the cost of leasing equipment used substantially in connection with a project, or acquiring materials used solely in connection with a project. Eligible project costs include the cost of:

(1) paving unpaved colonia roads;

(2) repaving or repairing paved colonia roads;

(3) acquiring materials or leasing equipment for colonia roads; and

(4) providing drainage for a colonia road.

For a project to be eligible for consideration for the program, it must be located in an eligible county, defined as a county located in the El Paso, Laredo, or Pharr department districts, and Terrell County, that has adopted the model rules promulgated by the Texas Water Development Board under Water Code, §16.343.

To be considered for funding under the program, an eligible county must submit an application, in the form prescribed by the department, to the district engineer of the district office responsible for the area in which the proposed project will be implemented. The address and telephone number of the district offices may be obtained by contacting the department's Transportation Planning and Programming Division at (512) 486-5038. The department must receive completed applications no later than 5:00 p.m., March 31, 2008.

Applications and information regarding the program are available from the department's El Paso, Odessa, Laredo, or Pharr district offices, by writing the Transportation Planning and Programming Division, 125 East 11th Street, Austin, Texas 78701-2483, or from the department's website at: **http://www.dot.state.tx.us**.

TRD-200800287
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 23, 2008

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The University of Texas System

Request for Applications

The University of Texas at Austin, Center for Mathematics and Science Education, Texas Regional Collaboratives for Excellence in Science and Mathematics Teaching announces a competitive Request for Applications.

Purpose: Applicant programs are to improve the academic achievement of students in science and math through forming partnerships among institutions of higher education, local education agencies, elementary schools, and secondary schools. These partnerships will provide high quality, sustained, and high intensity professional development focused on the education of science teachers as a career-long process. Such process should continuously stimulate teachers' intellectual growth and upgrade teachers' knowledge and skills through activities that are founded on scientifically based research and aligned with the Texas Essential Knowledge and Skills for Science and Math.

Estimated Range of Awards: Science and Math ($85,000 - $140,000)

Program Period: May 1, 2008 - July 31, 2009

Application for Transmittal Deadline: March 18, 2008

A copy of the Request for Application is online at http://www.thetrc.org/trc/. A copy can also be obtained by contacting:

Dr. Carol Fletcher

Assistant Director, Texas Regional Collaboratives

(512) 232-5690

carol.fletcher@mail.utexas.edu

Mailing address:

1 University Station D5500

George J. Sanchez Bldg. Room 356

Austin, Texas 78712

TRD-200800241
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: January 18, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).